



# *District and Municipal Court Judges' Association*

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April 25, 2023

## **VIA EMAIL**

Honorable Charles W. Johnson  
Washington Supreme Court Rules Committee  
C/O Clerk of the Supreme Court  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

Re: Comment in Opposition of Proposed New Rules CrRLJ 4.11 and CrRLJ 4.12

Dear Associate Chief Justice Johnson,

The Supreme Court Rules Committee should reject proposed new rules CrRLJ 4.11 and 4.12 because the proposals are obsolete in light of the recent changes to CrRLJ 3.3(f)(1) and CrRLJ 3.4 and because the proposed rule 4.11 is in direct conflict with CrRLJ 3.3(f)(1) and CrRLJ 3.4.

## The proposed new rules are obsolete

This proposed rule is obsolete because existing changes to CrRLJ 3.4 and CrRLJ 3.3(f)(1) now govern the appearance of the defendant and notice of new court dates provided to counsel for a continuance. This rule was originally proposed as a part of a BJA workgroup regarding maintaining emergency orders arising from the COVID pandemic. Since that time, several rules have been adopted that would be in direct conflict with this proposed new rule and the Supreme Court has adopted a new emergency order that does not include this proposed rule. Proposed new rule CrRLJ 4.12 tracks almost verbatim with the current language in CrRLJ 3.3(f)(1) and is not necessary.

## The proposed new rule 4.11 is in direct conflict with CrRLJ 3.3(f)(1) and CrRLJ 3.4

The current version of CrRLJ 3.4 is in direct conflict with this proposed new rule. Under CrRLJ 3.4 (a), the defendant's appearance is required at all hearings set by the court. An 'appearance' is defined as physically appearing, remotely appearing, or appearing through counsel. This rule provides valuable safeguards for the defendant by permitting a remote appearance and appearing through counsel and is consistent with *State v. Gelinas*, 15 Wn. App. 2d 484 (2020).

Pursuant to CrRLJ 3.4 (e), if the defendant fails to appear, either physically, remotely, or through counsel, a bench warrant may be issued for the failure to appear. Essentially, if the defendant does not appear in any manner, the court has the discretion to issue a bench warrant. There is no evidence that any court is abusing the discretion to issue a bench warrant under CrRLJ 3.4(e) when a defendant has failed to appear.

The current court rules have moved beyond the circumstances existing when Proposed Rule 4.11 was contemplated. Keeping in mind that CrRLJ 3.4 provides three separate manners in which the defendant can appear, this Proposed Rule would require the court to summons the defendant when they fail to physically appear if notice was provided to the defendant through

counsel pursuant to CrRLJ 3.3(f)(1). But the proposed rule is silent when addressing a defendant failing to remotely appear or failing to appear through counsel.

This proposed rule also disregards the important safeguards in CrRLJ 3.3(f)(1) regarding notice to the defendant. Rule 3.3 currently permits continuances without requiring the defendant to physically or remotely appear. Criminal cases are routinely continued as the parties investigate and litigate issues unique to individual cases. Hearings where cases are continued are generally very brief and uncontested. In many cases, requiring the defendant to appear physically or even remotely creates a hardship for defendants. The appearance through counsel relieves that hardship and is important for the administration of justice.

The only situation giving rise to notice of court dates being provided to defense counsel, rather than the defendant, is when a continuance is requested during a hearing where the defendant is appearing through counsel. The safeguard within the rule is the requirement that “defense counsel’s signature constitutes a representation that the defendant has been consulted and agrees to the continuance.” CrRLJ 3.3(f)(1).

Because the rule requires current contact between defense counsel and the defendant, that communication can be relied upon to find that “the court’s notice to defense counsel of new hearing dates constitutes notice to the defendant.” *Id.* No further inquiry into counsel’s communications is necessary. Additionally, providing notice of new court dates under CrRLJ 3.3(f)(1) through counsel is consistent with CrRLJ 1.2 by providing simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

We urge you to reject proposed new rules CrRLJ 4.11 and CrRLJ 4.12.

Sincerely,



Judge Rick Leo  
DMCJA President

cc: Judge Catherine McDowall, DMCJA Rules Committee Co-Chair  
Judge Wade Samuelson, DMCJA Rules Committee Co-Chair  
Antoinette Bonsignore, DMCJA Rules Staff  
Stephanie Oyler, DMCJA Primary Staff

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: DMCJA Comment in Opposition to Proposed New Rules CrRLJ 4.11 and CrRLJ 4.12  
**Date:** Tuesday, April 25, 2023 4:03:30 PM  
**Attachments:** [DMCJA Comment in Opposition to Proposed New Rules CrRLJ 4.11 and CrRLJ 4.12 04252023.pdf](#)  
[image003.png](#)

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**From:** Dugas, Tracy <Tracy.Dugas@courts.wa.gov>  
**Sent:** Tuesday, April 25, 2023 3:47 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** rick.leo@snoco.org; 'McDowall, Catherine' <Catherine.McDowall@seattle.gov>; 'wade.samuelson@lewiscountywa.gov' <wade.samuelson@lewiscountywa.gov>; Bonsignore, Antoinette <Antoinette.Bonsignore@courts.wa.gov>; Oyler, Stephanie <Stephanie.oyler@courts.wa.gov>  
**Subject:** DMCJA Comment in Opposition to Proposed New Rules CrRLJ 4.11 and CrRLJ 4.12

Greetings,

Please see the attached comment in opposition to proposed new rules CrRLJ 4.11 and CrRLJ 4.12, sent on behalf of Judge Leo, DMCJA President.

Thank you,

**Tracy Dugas**

Court Program Specialist | Office of Judicial and Legislative Relations

**Administrative Office of the Courts**

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