

KING COUNTY PROSECUTING ATTORNEY'S OFFICE



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PROSECUTING ATTORNEY

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April 28, 2023

Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Amendments to CrR 4.11 and CrRLJ 4.11

I write in opposition to the proposed new Criminal Rule 4.11 and CrRLJ 4.11, which would permit out-of-custody defendants to fail to appear for trial if they please, causing a minimum of a two-week continuance of the trial date. The proposed rule will not only be disruptive, it will be costly to the courts and to witnesses who have appeared as required.

The proposed rule begins with the premise that the court cannot rely on defense counsel to communicate to the defendant that there is a hearing scheduled for which the defendant must appear. This is inconsistent with CrR 3.3(f)(1) and CrRLJ 3.3(f)(1), both of which allow an agreed continuance of the trial date with the signature of only defense counsel, and provide, "notice to defense counsel of a new hearing date constitutes notice to the defendant."

Under current court rules, a defendant no longer has a responsibility to appear for most court hearings. The defendant does have a responsibility to maintain contact with their counsel. They may be in contact with counsel by email, or by telephone, or by text message. It is very hard to believe that any modern attorney communicates with their client by U.S. mail.

Nevertheless, the proposed rule, having attributed the defendant's failure to appear to defense counsel's failure to advise the defendant of the trial date, directs the court to mail a summons to the defendant for a new hearing date. That requires a continuance of the trial date, at a minimum for two weeks, given the necessity to find a mailing address and allow an opportunity for the mail to be posted, delivered, and read by the defendant in time to have notice of the new date.

What are the costs? The administrative costs are obvious, staff time, paper and postage, and setting an additional hearing. The court, counsel, and their support staff all must be prepared to proceed again. The appearances of witnesses must all be rescheduled. The scheduling of expert witnesses is complicated and a two-week continuance of trial may cause serious problems. There are costs to the witnesses who have arranged to appear and must do so again two weeks later. This may involve missing work, travel, or arranging for child care. The harm to witnesses

may be most dramatic in courts of limited jurisdiction, where all witnesses must appear on the day the trial is set. Only the defendant would have the option to stay home, with no risk of consequences. This cost applies to sentencing hearings as well – victims and survivors of victims often travel significant distances and take time off work to attend sentencing hearings.

It is true that if a defendant fails to appear under the current rules, these witnesses and survivors will be inconvenienced because the trial (or sentencing) will not proceed. But rescheduling and duplication of these costs is pointless. In some cases, the defendant has failed to appear because they have absconded and are not communicating with their counsel; they will not appear at the second hearing. In the remainder of cases, the defendant knows of the hearing date and simply has chosen not to appear. That may be because it is inconvenient for them, or it may be because the defendant believes the inconvenience and costs will cause witnesses not to appear again, or the defendant intends to cause stress to witnesses or victims by delaying the proceedings. This proposed rule encourages that manipulation of the court and should not be adopted.

Respectfully,



Donna Wise
Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office

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Subject: FW: Comment on Proposed CrR 4.11 and CrRLJ 4.11
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Good afternoon –

I have attached a comment opposing proposed court rules CrR 4.11 and CrRLJ 4.11.

Thank you,

Donna Wise
Senior Deputy Prosecuting Attorney

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