From:	OFFICE RECEPTIONIST, CLERK
To:	Martinez, Jacquelynn
Subject:	FW: Comment on CrRLJ 4.11 and CrR 4.11 proposed rules
Date:	Friday, April 28, 2023 10:57:03 AM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png

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From: Zavidow, Grace <gzavidow@kingcounty.gov>
Sent: Friday, April 28, 2023 10:50 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on CrRLJ 4.11 and CrR 4.11 proposed rules

Good morning,

I am a Deputy Prosecuting Attorney at the King County Prosecuting Attorney's Office. I am currently assigned to a trial rotation in the downtown Seattle courthouse. Please see below for my concerns with the proposed rules.

Issues with proposed new CrR 4.11:

It's contrary to the motivating premise of CrR 3.4, that the court can rely on defense counsel to provide notice to the defendant.

It's contrary to CrR 3.3(f)(1) (and the same CrRLJ), which states that a continuance may be granted upon written agreement of the parties, and provides:

> In the absence of the defendant's signature or presence at the hearing, defense counsel's signature constitutes a representation that the defendant has been consulted and agrees to the continuance. The court's notice to defense counsel of new hearing dates constitutes notice to the defendant.

The premise of proposed CrR 4.11 is that the court cannot rely on defense attorneys to convey court dates to their clients, but the premise of the proposed companion rule, CrR 4.12, (and CrR 3.3(f)(1)) is that defense attorneys are a reliable method of communication between the defendant and the court. Defense counsel can convey the defendant's agreement to a continuance to the court, and notice to defense counsel of a hearing date constitutes notice to the defendant. This proposed rule is inconsistent with that premise.

It eliminates any incentive for defendants to appear at hearings for which their physical presence is required, which are the most important proceedings, and proceedings for which witnesses and victims may appear (e.g., substantive motions, trial, bail hearings, sentencing). The defendant's failure to appear will result in substantial inconvenience and cost to witnesses and other participants, because the hearing cannot be rescheduled for the next day, but must be continued long enough to be confident that mail will delivered to the defendant with notice of the hearing. Rescheduling hearings, duplicating hearing dates, also will be a burden to the court system and attorneys who have to appear repeatedly.

A number of judges have commented that some defendants prefer notice to be delivered by email, which is not permitted by the rule.

Sending summons by mail is costly. The mandate in the rule does not carry additional funding for the court to do so. (or for the prosecutor to do so, if the court shifts responsibility there)

In King County Superior Court, many cases are on the trial calendar each day. On the trial date, a case will be placed on standby, awaiting the availability of a judge (or counsel, if they are in another trial). If trial cannot begin that day, the case is held over to the next day's trial calendar. The same thing may occur for several days. However, these hold-over cases do not appear for a hearing each day, the holds are handled off-docket. So, although the defendant will have been given notice of the initial trial date in court, they will not have been given notice in court of the hold to the next day. If the rule is implemented, the court will have to require defendants to appear in court each day they are on the trial calendar, to hold a hearing setting each case to the next day, instead of relying on defense counsel to communicate with their client. That procedure would be a waste of time and expense for the court, the lawyers, and defendants who must appear in court every day. Under the proposed rule, if those daily hearings are not set, the defendant may choose not to appear after the case is held over for two days, and will not be held to account by issuance of a bench warrant, but will instead accomplish a two-week continuance of the trial date. Unless additional unnecessary hearings are scheduled to establish that the defendant has notice of the next trial date, our trial calendar will descend into chaos.

Under King County Local Rules, defendants are required to appear for bond hearings and hearings set to address conditions of release. If this rule is adopted, the court cannot rely on defense counsel to provide notice of that hearing. Hearings, which may be set because of safety or flight concerns, will have to be continued for two weeks if the defendant fails to appear, to provide an opportunity for a mailed summons to reach the defendant.

There should be clear expectations about when defendants are required to appear. This rule muddies that question. It essentially provides that a defendant is not required to appear at a hearing at which their physical presence is required, at least until the second time that hearing is scheduled.

In each case in Superior Court, a trial date is selected at arraignment. However, in almost all cases, the trial date is continued, at least once, to allow for further investigation of the case and possible mitigation, for negotiation, to obtain expert services, or for other reasons. For 90% of those agreed

continuances, the defense attorney has signed the order on behalf of the defendant and the order of continuance is signed off-docket, as authorized by CrR 3.3(f)(1). Whether or not the defendant is in the courthouse that day with counsel, there is no hearing in court, so, under this rule, the defendant will not be deemed to have notice of the new trial date. The unintended consequence of the rule is to undermine the opportunity of counsel to appear on behalf of the defendant pursuant to CrR 3.4 and to force courts to require defendants to appear in person if the court wants to avoid a lengthy delay if they fail to appear on the trial date.

I strongly recommend that the Supreme Court not adopt the proposed rules. Thank you.

Best,
Grace

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