



# Superior Court Judges' Association

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April 10, 2023

Honorable Charles W. Johnson, Co-Chair

Honorable Mary I. Yu, Co-Chair

Supreme Court Rules Committee

Temple of Justice

P.O. Box 40929

Olympia, WA 98504-0929

Dear Justice Johnson and Justice Yu,

RE: Proposed New CrR/CrRLJ 4.11- Notice of Court Dates to Defendant and Proposed New CrR/CrRLJ 4.12 - Signatures

The Criminal Law and Rules Committee and Rural Courts Committee of the Superior Court Judges' Association (SCJA), reviewed the newly proposed criminal rules, CrR/CrRLJ 4.11 and CrR/CrRLJ 4.12. The SCJA has concerns about these proposed rules and respectfully requests the Supreme Court to reject both proposals.

#### **CrR/CrRLJ 4.11**

The SCJA's concerns with the proposed rules relate to their workability and necessity.

This proposal would place a new administrative and financial burden on courts to provide mailed notices to defendants related to court dates. Currently, superior courts are not equipped to send summonses to defendants. Judges direct clerks to issue summonses pursuant to CrR 2.2 for adult cases and RCW 13.40.100 for juveniles. The summonses are then served or mailed by law enforcement. The service of the summons does not involve the courts. This proposal would place a new burden on courts to provide mailed notices to defendants.

While a new burden on courts may be appropriate when necessary to fairly administer justice, this requirement is not needed to accomplish that end. In the cases affected by this rule, the defendants would already have actual notice of the criminal case, that they are subject to conditions and court dates related to the case, and who represents them. Defendants are typically under conditions to maintain contact with their attorneys.

As with other case types, notice to counsel serves as constructive notice to the defendant. It is unrealistic to expect that courts would have better access to defendants than defense counsel. Defendants' mailing addresses for receipt of summonses are likely less updated than the contact information their attorneys would have for their clients.

Recent changes to CrR 3.4 (adopted on February 1, 2021), allow for defendants to appear for routine court dates through their counsel. CrR 3.4 indicates that the defense counsel either

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present a signed waiver of the defendant's appearance or state on the record that the defendant prefers for counsel to represent them at that hearing. It is clear from these rule changes, which originated from the defense bar that eliminating the need for defendants to appear for routine court appearances places additional obligations on the relationship between defendant and defense counsel.

The nature of this relationship is also reflected in recent changes to CrR 3.3(f)(1), which indicates that "[t]he court's notice to defense counsel of new hearing dates constitutes notice to the defendant." This language originated from that in several of the Supreme Court's pandemic-related emergency orders.

Finally, if the Supreme Court is inclined to adopt some version of this proposed rule, a mailing requirement seems to be an antiquated and slow way to address the issue of notice. Email, social media, and text messaging are likely more reliable, speedy, and efficient ways for notices to be sent in these cases where actual notice of the case and conditions was already provided at a first appearance, arraignment, or other hearing.

#### **CrR/CrRLJ 4.12**

As to Proposed New Rule CrR 4.12 the SCJA is of the opinion that this rule is redundant given the recently adopted changes to CrR 3.3(f).

This rule proposal for CrR/CrRLJ CrR 4.12 was made prior to the Supreme Court adopting changes to CrR 3.3. The relevant portion of CrR 3.3(f) states:

"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."

Essentially, CrR 3.3(f) already permits attorneys to sign on behalf of their clients on agreed continuances. We oppose adoption of this proposed rule because it is unnecessary and has already been addressed through the recent changes to CrR 3.3(f).

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer Forbes".

Judge Jennifer Forbes, President  
Superior Court Judges' Association

cc: SCJA Board of Trustees  
Ms. Allison Lee Muller

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Martinez, Jacquelynn](#)  
**Subject:** FW: SCJA Public Comment Letters  
**Date:** Monday, April 17, 2023 2:21:38 PM  
**Attachments:** [SCJA Public Comment CR 4.11 and 4.12.pdf](#)  
[SCJA Public Comment CR 26.pdf](#)  
[SCJA Public Comment CR 65.pdf](#)  
[SCJA Public Comment GR 43.pdf](#)  
[SCJA Public Comment RAP 18.7.pdf](#)  
[image001.png](#)

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**From:** Green, Heidi <Heidi.Green@courts.wa.gov>  
**Sent:** Monday, April 10, 2023 11:05 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Benway, Jennifer <Jamanda.Benway@courts.wa.gov>  
**Cc:** Lee Muller, Allison <Allison.LeeMuller@courts.wa.gov>; Valdez, Andrea <Andrea.Valdez@courts.wa.gov>; 'Jennifer Forbes' <jforbes@kitsap.gov>  
**Subject:** SCJA Public Comment Letters

Good morning,

Please see the attached comment letters from the Superior Court Judges' Association regarding proposed changes to CR 4.11 and CR 4.12, CR 26, CR 65, GR 43, and RAP 18.7.

Thank you,

**Heidi Green**

Senior Policy Analyst | Office of Judicial & Legislative Relations

**Superior Court Judges' Association**

**Administrative Office of the Courts**

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