



Washington State Bar Association

COUNCIL ON PUBLIC DEFENSE
APRIL 7, 2020, 10:30AM TO 11:30AM VIRTUAL/CONFERENCE CALL MEETING
MINUTES

CPD voting members: Daryl Rodrigues (Chair), Travis Stearns (Vice-Chair), Louis Frantz, Justin Bingham, Kathy Kyle, Jaime Hawk, Rebecca Stith, Colin Fieman, Christie Hedman, Nick Allen, Abraham Ritter, Justice Sheryl Gordon McCloud, Joanne Moore, Commissioner Randy Johnson, Rachel Cortez, Matt Anderson, Judge Drew Henke

CPD Emeritus members (non-voting members): Ann Christian, Eileen Farley, Bob Boruchowitz

WSBA Staff: Diana Singleton, Carolyn MacGregor

Guests: Jason Schwartz, George Yeannakis, Magda Baker

Absent: Natalie Walton-Anderson, Judge Patricia Fassett, Kim Ambrose, Deborah Ahrens, Jason Bragg, Eric Hsu

January Amended Meeting Minutes: Louis Frantz moved to approve the minutes with the amendments. Justice Bingham seconded. No nays or abstentions. Motion passed.

February Meeting Minutes: Christie was present and did vote in favor. Carolyn will amend. Christie moved to approve the minutes. Louis seconded. No nays or abstentions. Motion passed.

Support for Proposed Amendments CrR 3.1, CrRLJ 3.1 and JuCR 9.3: Magda shared that defenders said that judges were asking prosecutors to weigh in on whether expert funds were appropriated. Proposed changing "may" to "shall" in wording.

Magda can't find a viable argument that the change will make it more likely that someone will say an office can't administer funds. It's saying that *if there's* a motion it shall be made ex parte. Daryl asks if there's anything controversial? Justice McCloud asks why there is a need to make it mandatory. Louis offered that an attorney always has the option to share information with the prosecutor if they choose. A defender always wants expert information ex parte and may share with the State at any time. Kathy says they want to protect attorney-client privilege. Magda asked that CPD submit a proposal to the WA Supreme Court. Comments are due April 30. Daryl suggests that a draft could be sent to one of the committees to approve, but then it was agreed Magda and Daryl will work together on the final version. Magda will submit a draft today.

Vote - Does this action fall within the scope of CPD charter? Yes - approved unanimously.

Should CPD approve a draft finalized by Magda and Daryl and subsequent submission of proposed amendment changes to the WA Supreme Court? Yes, passes unanimously.

Support for Amendments to CrRLJ 3.4 - Presence of the Defendant: Jaime Hawk

Jaime thanked Magda and Jason for help in this process. It's a similar procedural issue as the previous matter. Jaime is asking CPD to submit a comment in favor of the proposed rule change, which would cut down on the

number of mandatory court appearances that clients are required to attend, the frequency of which often leads to bail jumping charges. Magda shared that the burden of having to go to court is quite high.

Jason said that they are looking for ways to make the court system more feasible for the clients and to have more opportunities in which attorneys can represent the client remotely. Defendants would need to appear at arraignments, and all stages of trial and sentencing are mandatory, as well as if a judge makes an order for good cause; other than that clients can be represented through their counsel. The current health crisis situation demonstrates that this is possible.

Justin has concerns about courts with jurisdiction. Sometimes the only time defenders see clients is in court. He cannot support. Abraham shares that concern. Could this clog the system? Sometimes things resolve unexpectedly, and the client's presence is needed to move forward.

Jason says that the court shall not proceed unless the client is physically present for the appearances mentioned above (arraignment, during trial, etc.) Most of the resolutions will happen at those times listed. The rule encourages the defense attorney and prosecutor to enter agreed-upon orders and work in advance. This is to benefit clients, esp. when the attorneys haven't worked together. Abraham is concerned about the times when an attorney is unable to communicate with the client.

Louis is asking about misdemeanors and that the change also seems King County-centric. It does ease the burden on clients significantly. Some attorneys may misuse it, but not enough reason to block the amendment.

Joanne mentions other parts of state and suggests slowing down and looking at impact state-wide, especially in contract counties (about 40% of state). Sheryl is looking at childcare centers in courthouses as part of work of Commission on Gender and Sexuality and whether that would increase accessibility. This rule would greatly benefit folks with that need and she doesn't see a downside.

Jason and Magda have been speaking with folks in many counties, primarily on this side of the Cascades, for a year. They do see benefit especially for those who are restricted in travel and need to break the law in order to appear in court. Disability Rights WA is also a big supporter: this is especially a problem for the disabled in rural counties. Contract folks are in favor. Rachel is strongly in favor as someone who works in rural areas.

Jason said that there was so much variety in the criminal rule language that they looked at the civil rules to make criminal rule 3.4 look as much like the civil rule as they could without fully rewriting.

The proposal is to draft and submit comment in support of statewide rule change to CR 3.4 and that it be expedited as soon as possible given COVID-19.

Vote: Is the proposed action within the scope of the CPD charter? Yes, passes unanimously.

Should CPD approve the proposed action?

Louis moved the vote be taken, Jason seconds. Thirteen votes for, three against. Vote does not pass, but members are encouraged to comment as individuals.

Last Name	First Name	Yes	No	Abstain	Absent
Ahrens	Deborah				x

Allen	Nicholas	x			
Ambrose	Kimberly				x
Anderson	Matt	x			
Bingham	Justin		x		
Jason	Bragg				x
Cortez	Rachel		x		
Judge Patricia	Fassett				x
Fieman	Colin	x			
Louis	Frantz	x			
Hawk	Jaime	x			
Hedman	Christie	x			
Judge Henke	Drew		x		
Hsu	Eric				x
Johnson	Randy				x
Kyle	Kathleen	x			
Justice Gordon-McCloud	Sheryl	x			
Moore	Joanne	x			

Ritter	Abraham	x			
Rodrigues (Chair)	Daryl	x			
Stearns (Vice-Chair)	Travis	x			
Stith	Rebecca	x			
Natalie	Walton-Anderson				x

COVID Updates: Jason Schwarz was looking for information about people being held in jails currently. He found that there was 15 - 20% reduction in jail populations in the last 2 weeks with the previous total of 12,000 down to 6300. Some small jails have no one now. Some prosecutors' offices have agreed to release folks in some cases. He's not aware of juvenile court actions. The DOC is operating warrants. Justin said that in Spokane, before St Patrick's Day, anyone able to be released on their own recognizance - about half, were allowed to be, leaving 500 inmates overall, down from 1000, and there was no holding for simple possession. There has been some pushback there with regard to racial equity. Kathy shared that there is a question of utilizing six-person juries to honor social distancing and is wondering how this might impact the likelihood of jurors to convict? Jason mentioned the difficulty of accessing clients, and also providing confidential advice. How to access discovery and access attorney? Jails are not set up for multi-person meetings. This is especially difficult with non-English speaking clients.

Is there a way to get the emergency order interpreted into other languages? There has been some use of verbal interpretation.

Justice McCloud asked what is going on in the smaller counties, especially eastern WA. She wants to know how bad the situation is and how she can help. Rachel and Ann may be able to offer something.

Meeting adjourned at 12:15 pm.