WASHINGTON STATE BAR ASSOCIATION

Court Rules and Procedures Committee

Meeting Minutes
December 16, 2025

Members Present: Chair Andrew Yi, Charles Adams, Jonathan Bussey, William Elsinger, Eileen Farley, Jessica Fleming, Rachel Forde, Cade Jones, Samantha Kanner, Kellen Kooistra, Margo Martin, Kevin McCrae, Martin Mooney Jr., Craig Moore, Christine Olson, Jill Reuter, Tenaya Scheinman, Nathaniel Sugg, Judge Brian Tollefson, Mark Trivett, David Trujillo

Members Excused: Stephanie Dikeakos, Devon McCurdy, Matthew O'Laughlin, Robin Olson, Rachel Reynolds, Justin Steiner, Karissa Taylor

Also Attending: Nicole Gustine (WSBA Staff Liaison), Emily Crane (WSBA Staff Liaison), David Ward (AOC Liaison), Judge Paul Crisalli (SCJA Liaison)

The meeting was called to order at 12:00 p. m. once a quorum was established.

1. Introduction of the Newest Committee Members

2. Approval of Minutes
    - A motion was made and seconded to approve the October 28, 2025 meeting minutes. The motion passed by unanimous consent.

3. Subcommittee Reports

    - Criminal Rules for Superior Courts: Christine Olson, the Subcommittee Chair, has sent out a sign-up sheet to subcommittee members for rule assignments. This subcommittee met for an initial meeting in December.

    - Criminal Rules for Courts of Limited Jurisdiction: Eileen Farley, the Subcommittee Chair reported that the rule assignments have been sent out to subcommittee members. Additionally, Subcommittee Chair Farley has reached out to the Washington Defender Association (WDA) and respective Committee judicial liaisons for any inquiries or input. Subcommittee member Mark Trivett reported reached out to the Washington Association for Prosecuting Attorneys (WAPA). Subcommittee member Margo Martin also reported that she will reach out as well. This subcommittee met for an initial meeting in December.

    - Supreme Court Comment Subcommittee: Judge Brian Tollefson, the Subcommittee Chair, gave a brief update on the Committee. No initial meeting has occurred

- Subcommittee X: Nathaniel Sugg, Subcommittee Chair gave a brief update to the Committee. This subcommittee has their initial meeting scheduled in January.

DRAFT

4. Judge Paul Crisalli gave a brief introduction to his proposed changes to CR 11 which has been forwarded by the Chair to Subcommittee X.

   The meeting adjourned at 12:19 p. m.

DRAFT

To: Andrew Yi, Chair

From: Christine Olson, CrR Subcommittee Chair

Date: February 4, 2026

Re: Proposed Changes to CrR 4.2, CrR 4.7, CrR 2.2, and CrR 3.2

Dear Chair Yi:

The CrR Subcommittee met on January 6, 2026, and February 3, 2026. During these meetings, the subcommittee reviewed and discussed the currently proposed rule changes to CrR 4.2, CrR 4.7, CrR 2.2, and CrR 3.2.

As a subcommittee, we propose submitting the following comments regarding the proposed amendments to CrR 4.7:

- The proposed rule uses both the "accused" and the "defendant." For consistency, we recommend replacing "accused" with "defendant."

- The proposed rule does not currently establish a timeline for when the prosecutor must receive a copy of the redacted discovery. We propose the rule require defense counsel to provide the prosecutor with a copy of the redacted discovery before providing it to the client.

As a subcommittee, we would propose making the following comments re: the proposed changes to CrR 4.2:

- Revise paragraph 6(rr) to clarify if a defendant is originally arrested for trafficking in the first degree or trafficking in the second degree under RCW 9A.40.100, and is subsequently convicted of, or pleads guilty to, a lesser or different offense, the Court shall impose a $10,000 fine, two-thirds of which may be waived upon a finding of indigency.
    - We felt this clarification is helpful to avoid any interpretation that the provision applies to other trafficking offenses, such as trafficking stolen property. The currently proposed rule reads: "If I am pleading guilty to a trafficking offense or a reduced charge…"

The subcommittee engaged in extensive, good-faith discussions regarding the proposed changes to CrR 2.2 and CrR 3.2. Through those discussions, it was clear members had very different views and opinions, and we therefore decided not to offer any collective comments or proposals.

February 2, 2026

Andrew Yi, Chair
WSBA Rules Committee

Re: Proposed Changes to CrRLJ 2.2, CrRLJ 3.2 and CrRLJ 4.7

Dear Chair Yi:

The subcommittee reviewing the Rules for Courts of Limited Jurisdiction (CrRLJ) met on January 20, 2026, to discuss the proposed amendments to CrRLJ 2.2 (Warrant of Arrest Upon Complaint or Summons), 3.2 (Release of Accused) and 4.7 (Discovery), which the Washington Supreme Court published for comment January 2026. Subcommittee members Kellen Kooistra (Whatcom County Office of the Prosecuting Attorney), Margo Martin (King County Office of the Prosecuting Attorney), Craig Moore (formerly in-house counsel to financial institutions), Christine Olson (Snohomish County Public Defenders Association), Mark Trivett (Badgley Mullins Turner), David Trujillo (Law Offices of David Trujillo), and I (former Director Northwest Defenders Association) all participated in the call.

A draft of these comments was sent to subcommittee members after our meeting for review. Subcommittee members did not offer any changes or corrections.

Proposed Amendments to CrRLJ 2.2 (Warrant or Summons) and CrLJ 3.2 (Release of Accused)

CrRLJ 2.2 Warrant of Arrest or Summons Upon Complaint

CrRLJ 2.2 governs the process by which defendants are brought to court when there is probable cause to believe they have committed a misdemeanor, gross misdemeanor or felony offense. As now written, the rules allow judges to issue warrants under CrRLJ 2.2 if they find that a summons or promise to appear would not assure defendants will appear, if they find a likelihood defendants will commit new crimes, or if the court finds a likelihood that defendants will seek to intimidate witnesses or interfere with the administration of justice.

CrRLJ 3.2 governs the process to be followed when defendants subsequently first appear in court and judges must decide whether to release them. As now written both rules require the courts, subject to certain exceptions, either to impose no conditions upon release or to impose the least restrictive conditions necessary to assure defendants return, commit no new offenses and not interfere with witnesses or the administration of justice.

The proposed amendments would make two changes to these provisions and add a provision governing bail. The amendments would:

1- Replace the current requirement that a judge must find a defendant's promise to appear will not assure that the defendant " will appear in response to a summons" with a requirement the court find a defendant "presents a high likelihood of willful flight to avoid prosecution." ("High likelihood of flight to avoid prosecution" is defined in CrLJ3.2.)
2- Replace the current requirement a judge must find a defendant will "seek to intimidate witnesses or otherwise unlawfully interfere with the administration of justice" with a requirement the court find a defendant will "seek to intimidate or threaten a witness, victim, or court employee, or tampers with evidence, or violate a civil or criminal protection order, criminal no contact order, or family law restraining order, and/or conditions of release that protect the safety of the alleged victims, witnesses, and the community."
3- Add a provision that, if a warrant is issued, "there shall be strong presumption that the bail amount set in the warrant may be satisfied by deposit in the registry of the court a sum not to exceed 10 percent of the bail amount; such deposit shall be returned upon the performance of the conditions of release."

Discussion and Recommendations

Subcommittee members agreed that the requirement that the court find an intent to avoid or flee from prosecution could lead to contested hearings on the defendant's intent. Would a defendant's travel to Oregon to see a sick relative count as intent to avoid or flee from prosecution, especially before charges had been filed? Would the prosecuting authority need to present such evidence before the case has even begun and potentially require an evidentiary hearing?

The subcommittee recommends that the phrase "to avoid prosecution" and "to flee from prosecution" be deleted in each rule.

The proposed amendments substitute a specific list of offenses and persons at risk for the more general and undefined "interfere with witnesses and administration of justice".

Subcommittee members raised no objection to this change.

The proposed amendments add a "strong presumption" if a warrant is issued a) that it can be satisfied by defendants depositing up to 10 percent of the bail set in the warrant in the court registry and b) the money will be refunded if the defendant satisfies the conditions of release.

Subcommittee members agreed that money, or a lack of money, should not determine whether defendants are released or are held in custody. Members agreed that refundable bail gave defendants an incentive to make court appearances, something a nonrefundable fee paid to a bail bond company does not provide. Some subcommittee members wondered if bail bond companies were a "resource" for courts to find absent defendants. The consensus among

prosecutors and defense attorneys on the subcommittee was that, especially for small bail amounts, bail bond companies were not a "resource" for courts to help locate absent defendants.

Bail amounts for offenses requiring mandatory appearance by defendants like DUIs or domestic violence offenses, are now capped at $500 for misdemeanors and $1,000 for gross misdemeanors. The proposed amendment would cap these bail amounts at $200 with exceptions for a list of offenses, primarily crimes of violence or violations of protection orders.

Subcommittee members recommend that the rules emphasize refundable bail as an option. Members took no position on the proposed change in the bail amount cap.

Rules CrRLJ 2.2 and CrLJ 3.2 use slightly different language to describe conduct that indicates a defendant will seek to avoid criminal proceedings. CrRLJ 2.2 uses the phrase "willful flight from prosecution." CrRLJ 3.2 uses the phrase "willful flight to avoid prosecution."

The subcommittee discussed the proposed amendments as if the terms are interchangeable but recommends, if so, they be identical. If the intent is that they be different they should each be defined.

CrRLJ 3.2 Release of Accused

CrRLJ 3.2 requires that at a preliminary appearance defendants shall be released pending trial on their own recognizance (promise to appear) unless the court determines that such recognizance will not assure their presence at trial.

The proposed amendment would replace "reasonable assurance" with "high likelihood of willful flight to avoid prosecution." It defines "willful flight" as "intentional conduct with a purpose to thwart the judicial process to avoid prosecution. Isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution."

As discussed earlier subcommittee members recommend "to avoid prosecution" be deleted.

CrRLJ 3.2(o) now caps the bail amount that can be set for misdemeanors and gross misdemeanors at $500 for misdemeanors and $1,000 for gross misdemeanors. The proposed amendments to CrRLJ 2.2 and 3.2 would reduce that cap to $200 and provide that funds can be deposited in the registry of the court, to be refunded if defendants satisfy the conditions of release. The proposed amendments except from the bail cap a series of violent offenses listed in renumbered CrRLJ 3.2 (o).

As discussed earlier subcommittee members recommend that the rules emphasize refundable bail as an option. Members took no position on the change in the cap on the bail amount.

CrRLJ 4.7 Discovery

CrRLJ 4.7 now requires that a defense attorney who wishes to provide copies of discovery to a client first redact the discovery and obtain the prosecutor's approval before providing the redacted discovery to the client.

The proposed amendments would allow a defense attorney to provide discovery to a client without the prosecutor's pre-approval if certain items listed in the proposed amendment are redacted. The proposed amendment gives a prosecutor seven days after providing unredacted discovery to a defense attorney to seek a hearing to object to a defendant receiving discovery from which the items listed in the proposed amendments have been or will be redated. The proposed amendment also allows a prosecutor to seek a protective order to prevent a defendant from receiving discovery redacted pursuant to the rule and/or containing other items that the prosecutor contends should not be disclosed.

As now written CrRLJ 4.7 provides "Any material furnished to a lawyer pursuant to these rules shall remain in the exclusive custody of the lawyer…" The proposed amendments change that to "Any materials furnished to *a defendant and/or attorney* pursuant to these rules shall remain in the exclusive custody of the *defendant and/or attorney*…" Emphasis added.

Defendants who choose to represent themselves receive discovery as attorneys do. Represented defendants can only receive redacted discovery. Members assumed the "defendant" in the proposed amendment was an unrepresented or *pro se* defendant, not a defendant represented by an attorney, although that was not clear.

Subcommittee members recommend that the rule make clear that it applies to represented defendants who wish to receive copies of discovery, not to defendants who choose to represent themselves.

Subcommittee members felt it was helpful to have guidelines for what should be redacted. Members did not take a position on the items included or not included in the list of items to be redacted.

One subcommittee member noted that the proposed rule provides that defense attorney "may" redact the materials listed in the proposed amendments.

The subcommittee recommends the rule make clear defense counsel shall redact items listed in the proposed rule before providing discovery to a client.

The proposed amendment gives a prosecutor seven days after providing a defense attorney with unredacted discovery to object to a defendant receiving redacted discovery. If a

defense attorney provides discovery to a client immediately after receiving and redacting the discovery any objection from the prosecutor would be moot. The proposed amendment does not give a defense attorney an opportunity to object to a required redaction.

Subcommittee members recommend the proposed rule allow either party to set a hearing within five days after discovery is provided if either has an objection to a redaction that is requested.

Subcommittee members noted that the proposed amendment at times refers to "attorney" and other times to "defense counsel."

Members recommend one term be used consistently.

Please let me know if you have any questions or need additional information.

Eileen Farley

Re: proposed amendments to GR 33 and proposed addition of GR 31(g) in Supreme Court Order No. 25700-A-1675.

Key Issues for Potential Comment

1. "Appointment of Counsel" as an Accommodation — Scope, Standards, and Funding

The proposal appears to recognize appointment of counsel as an accommodation. Clarification is needed regarding:

- **Scope:** whether this provision is intended to apply only in limited civil contexts or also in criminal and post-conviction proceedings;
- **Standard:** what showing is required to establish that appointed counsel is "necessary" as an accommodation;
- **Decision-maker / process:** whether the request is addressed administratively, judicially, or through a hybrid process;
- **Interaction with existing law:** how this provision is intended to operate alongside existing statutory, constitutional, and case-law frameworks governing appointment of counsel; and
- **Funding mechanism:** whether the cost of counsel is expected to be borne by state programs, local indigent defense systems, court budgets, or another source.

2. Day-of Proceeding Requests — Operational Standards

The proposal permits accommodation requests at any stage, including on the day of a proceeding. Clarification is needed regarding:

- standards courts should apply when late requests require a modification of hearing format, additional time, or a continuance; and
- how courts should evaluate impacts on other parties, witnesses, counsel availability, and docket integrity.

3. Documentation Requirements — Uniformity and Administrative Consistency

The proposal reduces documentation expectations in many circumstances. Clarification is needed regarding:

- when documentation may be required or appropriate (especially for accommodations involving significant cost or complexity); and

- what forms of documentation, if any, courts may request without creating inconsistent local practices.

4. “Psychological” and “Financial” Barriers — Definitional Boundaries

The proposal identifies psychological and financial barriers within the accommodation framework. Clarification is needed regarding:

- how “financial barriers” is intended to operate within GR 33; and
- how this concept is distinguished from other existing mechanisms addressing hardship, fees, or resource limitations.