

WSR 21-14-109
RULES OF COURT
STATE SUPREME COURT
[July 1, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO CrR) NO. 25700-A-1366
3.1—RIGHT TO AND ASSIGNMENT)
OF LAWYER AND CrR 7.8—RELIEF)
FROM JUDGMENT OR ORDER)

The Washington State Office of Public Defense, the Washington Defender Association, and the Washington Association of Criminal Defense Lawyers, having recommended the suggested amendments to CrR 3.1—Right to and Assignment of Lawyer and CrR 7.8—Relief From Judgment or Order, and a majority of the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites with an end date of September 30, 2021.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than September 30, 2021. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 1st day of July, 2021.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

ATTACHMENT 1 - SUGGESTED AMENDMENTS TO CrR 3.1 AND CrR 7.8

CrR 3.1

RIGHT TO AND ASSIGNMENT OF LAWYER

(b) Stage of Proceedings.

(1) The right to a lawyer shall accrue as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest.

(2) A lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. A lawyer shall be provided without regard to a prior finding of indigence for any person (i) serving a sentence for a conviction based upon a statute determined to be void, invalid, or unconstitutional, or (ii) serving a sentence which was calculated under RCW 9.94A.525 using a prior conviction based upon a statute determined to be void, invalid, or unconstitutional. A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of the original

lawyer pursuant to section (e) because geographical considerations or other factors make it necessary.

CrR 7.8**RELIEF FROM JUDGMENT OR ORDER****(c) Procedure on Vacation of Judgment.**

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing. For purposes of subsection (i), a defendant necessarily makes a substantial showing that he or she is entitled to relief where the motion contends the person (A) is serving a sentence for a conviction based upon a statute determined to be void, invalid, or unconstitutional, or (B) is serving a sentence which was calculated under RCW 9.94A.525 using a prior or current conviction based upon a statute determined to be void, invalid, or unconstitutional.

(3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.