

WSR 21-04-083
RULES OF COURT
STATE SUPREME COURT
[December 2, 2020]

IN THE MATTER OF THE PROPOSED) ORDER
AMENDMENTS TO GR 13—USE OF) NO. 25700-A-1324
UNSWORN STATEMENT IN LIEU OF)
AFFIDAVIT, GR 30—ELECTRONIC)
FILING AND SERVICE, CrR 2.2—)
WARRANT OF ARREST AND)
SUMMONS, CrR 2.3—SEARCH AND)
SEIZURE, CrR 3.2.1—PROCEDURE)
FOLLOWING WARRANTLESS)
ARREST—PRELIMINARY)
APPEARANCE, CrRLJ 2.1—)
COMPLAINT—CITATION AND)
NOTICE, CrRLJ 2.2—WARRANT OF)
ARREST OR SUMMONS UPON)
COMPLAINT, CrRLJ 2.3—SEARCH)
AND SEIZURE, CrRLJ 3.2.1—)
PROCEDURE FOLLOWING)
WARRANTLESS ARREST—)
PRELIMINARY HEARING, CrRLJ 3.6)
—SUPPRESSION PROCEDURE, IRLJ)
6.7—IDENTITY CHALLENGES AND)
RELIEF FROM JUDGMENT, RALJ)
6.3.1—TRANSCRIPT OF)
ELECTRONIC RECORD, JuCR 7.3—)
DETENTION AND RELEASE, SPR)
98.16W—ESTATES—)
GUARDIANSHIP—SETTLEMENT OF)
CLAIMS OF MINORS AND)
INCAPACITATED PERSONS)

The Board of Judicial Administration, Superior Court Judges' Association and District and Municipal Court Judges' Association Legislative Committees, having recommended the adoption of the Proposed Amendments to GR 13—Use of Unsworn Statement in Lieu of Affidavit, GR 30—Electronic Filing and Service, CrR 2.2—Warrant of Arrest and Summons, CrR 2.3—Search and Seizure, CrR 3.2.1—Procedure Following Warrantless Arrest—Preliminary Appearance, CrRLJ 2.1—Complaint—Citation and Notice, CrRLJ 2.2—Warrant of Arrest or Summons Upon Complaint, CrRLJ 2.3—Search and Seizure, CrRLJ 3.2.1—Procedure Following Warrantless Arrest—Preliminary Hearing, CrRLJ 3.6—Suppression Procedure, IRLJ 6.7—Identity Challenges and Relief From Judgment, RALJ 6.3.1—Transcript of Electronic Record, JuCR 7.3—Detention and Release, SPR 98.16W—Estates—Guardianship—Settlement of Claims of Minors and Incapacitated Persons, and the Court having considered the proposed amendments, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the proposed amendments will be published in the Washington Reports and will become effective on February 1, 2021.

DATED at Olympia, Washington this 2nd day of December, 2020.

Stephens, C.J.
Johnson, J. Gordon McCloud, J.
Madsen, J. Yu, J.
Owens, J. Montoya-Lewis, J.
Gonzalez, J. Whitener, J.

PROPOSED AMENDMENT:

GR 13

USE OF UNSWORN STATEMENT IN LIEU OF AFFIDAVIT

(a) Definitions.

(a) Unsworn Statement Permitted. Except as provided in section (b) whenever a matter is required or permitted to be supported or proved by affidavit, the matter may be supported or proved by an unsworn written statement, declaration, verification, or certificate executed by affixing or placing their signature in accordance with RCW 9A.72.085 GR 30.

The unsworn statement must state: (1) that it is certified or declared by the person to be true under penalty of perjury; (2) the date and place of its execution; and (3) that it is so certified or declared under the laws of the state of Washington.

The certification or declaration may be in substantially the following form:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

(Date and Place)

(Signature)

(b) Exceptions. [*Unchanged.*]

PROPOSED AMENDMENT:

GR 30

ELECTRONIC FILING AND SERVICE

(a) Definitions.

(1) ~~"Digital signature" is defined in RCW 19.34.020.~~

~~(2) "Electronic Filing" is the electronic transmission of information to a court or clerk for case processing.~~

~~(2)-(3) "Electronic Document" is an electronic version of information traditionally filed in paper form, except for documents filed by facsimile which are addressed in GR 17. An electronic document has the same legal effect as a paper document.~~

~~(3)-(4) "Electronic Filing Technical Standards" are those standards, not inconsistent with this rule, adopted by the Judicial Information System committee to implement electronic filing.~~

~~(4) "Electronic signature" is an electronic image of the handwritten signature of an individual; or other electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record, including but not limited to "/s/ [name of signatory]".~~

~~(5) "Filer" is the person whose user ID and password are used to file an electronic document.~~

~~Comment~~

~~The form of "digital signature" that is acceptable is not limited to the procedure defined by chapter 19.34 RCW, but may include other equivalently reliable forms of authentication as adopted by local court rule or general order.~~

~~(b) - (c) [*Unchanged.*]~~

~~(d) Authentication of Electronic Documents.~~

~~(1) [*Unchanged.*]~~

~~(2) Signatures~~

(A) Attorney Signatures—An electronic document which requires an attorney's signature may be signed with a ~~digital~~ an electronic signature or signed in the following manner:

s/John Attorney
 State Bar Number 12345
 ABC Law Firm
 123 South Fifth Avenue
 Seattle, WA 98104
 Telephone: (206) 123-4567
 Fax: (206) 123-4567
 E-mail: John.Attorney@lawfirm.com

(B) Non-attorney signatures—An electronic document which requires a non-attorney's signature and is not signed under penalty of perjury may be signed with a ~~digital~~ an electronic signature or signed in the following manner:

s/John Citizen
 123 South Fifth Avenue
 Seattle, WA 98104
 Telephone: (206) 123-4567
 Fax: (206) 123-4567
 E-mail: John.Citizen@email.com

(C) Non-attorney signatures on documents signed under penalty of perjury—Except as set forth in (d)(2)(D) of this rule, if the original document requires the signature of a non-attorney signed under penalty of perjury, the filer must either:

(i) Scan and electronically file the entire document, including the signature page with the signature, and maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter; or

(ii) Ensure the electronic document has the ~~digital~~ electronic signature of the signer.

(D) [*Unchanged.*]

(E) Multiple signatures—If the original document requires multiple signatures, the filer shall scan and electronically file the entire document, including the signature page with the signatures, unless:

(i) The electronic document contains the ~~digital~~ electronic signatures of all signers; or

(ii) For a document that is not signed under penalty of perjury, the signator has the express authority to sign for an attorney or party and represents having that authority in the document.

If any of the non-~~digital~~ electronic signatures are of non-attorneys, the filer shall maintain the original signed paper document for the duration of the case, including any period of appeal, plus sixty (60) days thereafter.

(F) [*Unchanged.*]

(3) An electronic document filed in accordance with this rule shall bind the signer and function as the signer's signature for any purpose, including CR 11. An electronic document shall be deemed the equivalent of an original signed document if the filer has complied with this rule. All electronic documents signed under penalty of perjury must conform to the oath language ~~requirements~~ set forth in RCW 9A.72.085 and GR 13.

(e) [*Unchanged.*]

PROPOSED AMENDMENT:

CrR 2.2

WARRANT OF ARREST AND SUMMONS

(a) Warrant of Arrest.

(1) [Unchanged.]

(2) *Probable Cause.* Before ruling on a request for a warrant the court may require the complainant to appear personally and may examine under oath the complainant and any witnesses the complainant may produce. A warrant of arrest may not issue unless the court determines that there is probable cause to believe that the defendant committed the offense charged. The court shall determine probable cause based on an affidavit, a ~~document~~ statement as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically, stenographically, or through any other reliable means. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) [Unchanged.]

(b) - (g) [Unchanged.]

PROPOSED AMENDMENT:

CrR 2.3

SEARCH AND SEIZURE

(a) - (b) [Unchanged.]

(c) Issuance and Contents. A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. The evidence in support of the warrant must be in the form of affidavits, a ~~document~~ statement as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, or sworn testimony establishing the grounds for issuing the warrant and may be provided to the court by any reliable means. Any sworn testimony must be recorded and made part of the court record and shall be transcribed if requested by a party if there is a challenge to the validity of the warrant or if ordered by the court. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purpose to affix the court's signature to a warrant identifying the property or person and naming or describing the person, place, or thing to be searched. The court's authorization may be communicated by any reliable means. A record shall be made of any additional evidence on which the court relies. The warrant shall be directed to any peace officer and shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property or person specified. The warrant shall designate the court to which the warrant shall be returned. The warrant may be served at any time

(d) - (f) [Unchanged.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

PROPOSED AMENDMENT:

CrR 3.2.1

PROCEDURE FOLLOWING WARRANTLESS ARREST—

PRELIMINARY APPEARANCE

(a) [Unchanged.]

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in CrR 2.2(a). If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for subsequent court hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the crime alleged, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits, ~~documents~~ statements as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Evidence may be provided by any reliable means. Sworn testimony shall be recorded electronically, stenographically, or through any other reliable means. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations, and may be hearsay in whole or in part. The court's probable cause determination may be recorded by any reliable means.

(c) - (f) [Unchanged.]

PROPOSED AMENDMENT:

CrRLJ 2.1

COMPLAINT—CITATION AND NOTICE

(a) Complaint. [Unchanged.]

(b) Citation and Notice To Appear.

(1) - (3) [Unchanged.]

(4) *Certificate.* The citation and notice shall contain a form of certificate by the citing official that he or she certifies, under penalties of perjury, as provided by ~~RCW 9A.72.085, and any law amendatory thereto~~ GR 13, that he or she has probable cause to believe the person committed the offense charged contrary to law. The certificate need not be made before a magistrate or any other person.

(5) [Unchanged.]

(c) - (d) [Unchanged.]

PROPOSED AMENDMENT:

CrRLJ 2.2

WARRANT OF ARREST OR SUMMONS UPON COMPLAINT

(a) Issuance of Warrant of Arrest.

(1) [Unchanged.]

(2) *Probable Cause.* A warrant of arrest must be supported by an affidavit, a ~~document~~ statement as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically, stenographically, or by any reliable method. The evidence shall be preserved. The court must determine there is probable cause to believe that the defendant has committed the crime alleged before issuing the warrant. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) [Unchanged.]

(b) - (g) [Unchanged.]

PROPOSED AMENDMENT:

CrRLJ 2.3

SEARCH AND SEIZURE

(a) - (b) [Unchanged.]

(c) **Issuance and Contents.** A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. An affidavit, a ~~document~~ statement as provided in RCW ~~9A.72.085~~ or any law amendatory thereto GR 13, or sworn testimony establishing the grounds for issuing the warrant must be provided or transmitted to the court by any reliable method. Sworn testimony must be in writing, recorded, or otherwise preserved. The record shall include any additional evidence relied upon by the court. The recording, or a duplication of the recording, shall be a part of the court record and shall be provided if requested or if ordered by the court. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purposes to affix the court's signature to a warrant. The authorization of the warrant may be done through any reliable method. The warrant may be directed to any peace officer. The warrant shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property or person specified. The warrant shall designate the court to which the warrant shall be returned. The warrant shall be returned to the issuing court, filed in the court record, and available for public review unless ordered sealed by the court. Unless otherwise designated by the issuing court, the warrant may be served at any time of day or night.

(d) - (g) [Unchanged.]

Comment
[Unchanged.]

PROPOSED AMENDMENT:

CrRLJ 3.2.1

PROCEDURE FOLLOWING WARRANTLESS ARREST—
PRELIMINARY HEARING

(a) **Probable Cause Determination.** [Unchanged.]

(b) **How Determined.** The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in CrRLJ 2.2(a). In making the probable cause determination, the court may consider an affidavit, a ~~document~~ statement as provided in RCW ~~9A.72.085~~ or any law amendatory thereto GR 13, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony, including telephonic statements, shall be recorded electronically, stenographically, or by any reliable method. The written or recorded evidence considered by the court may be hearsay in whole or part. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations. The court's probable cause determination may be recorded through any reliable method. If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for a court hearing, the court shall proceed to determine whether probable cause exists to believe that the accused committed the crime alleged, unless this determination has previously been made by a court.

(c) - (g) [Unchanged.]

PROPOSED AMENDMENT:

CrRLJ 3.6
SUPPRESSION PROCEDURE

(a) **Pleadings; Determination Regarding Hearing.** Motions to suppress physical, oral or identification evidence other than motions pursuant to ~~rule CrRLJ 3.5~~ shall be in writing supported by an affidavit or ~~document~~ statement as provided in RCW ~~9A.72.085~~ or any law amendatory thereto GR 13, setting forth the facts the moving party anticipates will be elicited at a hearing. If there are no disputed facts, the court shall determine whether an evidentiary hearing is required. If the court determines that no evidentiary hearing is required, the court shall set forth its reasons for not conducting an evidentiary hearing.

(b) **Decision.** [Unchanged.]

PROPOSED AMENDMENT:

IRLJ 6.7

IDENTITY CHALLENGES AND RELIEF FROM JUDGMENT

(a) [Unchanged.]

(b) **Identity Challenge.**

(1) [Unchanged.]

(2) *Identity Affidavit.* A defendant moving to vacate a judgment for mistaken identification shall file an affidavit or certification under RCW ~~9A.72.085~~ with the court in which the infraction was found committed and with the office of the prosecuting authority assigned to the court stating that he or she could not be the person identified by the citing officer as having committed the infraction, citing a factual basis for the assertion and stating that he or she was not served with the notice of infraction.

(3) - (6) [Unchanged.]

PROPOSED AMENDMENT:

RALJ 6.3.1

TRANSCRIPT OF ELECTRONIC RECORD

(a) - (c) [No changes.]

(d) **Transcript Generally.**

(1) *Form.* [No changes.]

(2) *Certification.* The person preparing the transcript shall certify or declare under penalty of perjury that it is true and correct in accordance with RCW ~~9A.72.085~~ or any law amendatory thereof GR 13.

(3) *Disputes.* [No changes.]

(e) - (g) [No changes.]

PROPOSED AMENDMENT:

JuCR 7.3

DETENTION AND RELEASE

(a) **Time for First Appearance Generally.** [Unchanged.]

(b) **Determination of Probable Cause.** The court shall determine probable cause based on an affidavit, a ~~document~~ statement as provided in RCW ~~9A.72.085~~ or any law amendatory thereto GR 13, or sworn testimony. The sworn testimony shall be electronically or stenographically recorded. The evidence shall be preserved. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(c) - (f) [Unchanged.]

PROPOSED AMENDMENT:

SPR 98.16W

Superior Court Special Proceedings Rules

ESTATES—GUARDIANSHIP—SETTLEMENT

OF CLAIMS OF MINORS AND INCAPACITATED PERSONS

(a) - (f) [Unchanged.]

(g) Attorney's Fees and Costs. Any attorney claiming fees, costs or other charges incident to representation of the affected person, from the claim proceeds or otherwise, shall file an affidavit or declaration ~~under RCW 9A.72.085~~ in support thereof. Copies of any written fee agreements must be attached to the affidavit or declaration.

(h) - (k) [Unchanged.]