

WSR 22-23-097
RULES OF COURT
STATE SUPREME COURT
[November 10, 2022]

IN THE MATTER OF THE ) ORDER
SUGGESTED AMENDMENT TO ) NO. 25700-A-1479
CrRLJ 3.4—APPEARANCE OF THE )
DEFENDANT )

The District and Municipal Court Judges' Association, having recommended the adoption of the suggested amendment to CrRLJ 3.4—Appearance of the Defendant, and the Court having considered the suggested amendment, and having determined that the suggested amendment will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendment as shown below is adopted.

(b) That pursuant to the emergency provisions of GR 9 (j) (1), the suggested amendment will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 10th day of November, 2022.

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

GENERAL RULE 9
RULE AMENDMENT COVER SHEET
PROPOSED TECHNICAL AMENDMENT TO CrRLJ 3.4

- 1. Proponent: DMCJA
2. Spokesperson & Contact Info: Commissioner Rick Leo, DMCJA President

3. Purpose of Proposed Rule Amendment:
DMCJA is requesting expedited consideration for a technical change to CrRLJ 3.4(c).

When the current version of CrRLJ 3.4 was proposed, DMCJA struck through some language permitting judicial officers to allow remote appearances for several types of hearings including arraignments and sentencing. Remote appearances have proven to be a valuable tool in the administration of justice. Judicial officers should retain the discretion to permit remote appearances.

When the DMCJA proposed this change, we interpreted the "good cause" language of the rule to allow for courts to have discretion to continue to allow remote appearance for these types of hearings. However, we did not anticipate that some of our member courts would interpret the deletion of the remote appearance language to disallow those types of hearings.

DMCJA asks the Supreme Court Rules Committee to determine that this proposal is a technical change. GR 9(f) defines a technical change as "one which corrects a clerical mistake or an error arising from oversight or omission." Eliminating the remote appearance option from CrRLJ 3.4(c) was an oversight. A modest language change from the

rule is required because the term 'remote appearance' is used in the new rule.

Many judicial officers feel that the absence of the 'or remote appearance in the court's discretion' language from Rule 3.4 has limited their ability to permit a remote appearance. This technical change would clarify that remote appearances, in the court's discretion, are still permitted.

4. Is Expedited Consideration Requested? Yes. Expedited consideration is requested in order to avoid confusion and permit the current practice of remote appearances. As long as the Supreme Court Emergency Orders regarding COVID remain in place, Sections 8 and 10 of that Order permit remote appearances in the discretion of the Court. DMCJA requests expedited consideration to correct this oversight and requests a determination that this proposal is a technical change. This would promote a prompt amendment to the rule and clarification for judicial officers regarding remote hearings.

5. Is a Public Hearing Recommended? No.

**CrRLJ 3.4 - APPEARANCE OF THE DEFENDANT**

**Sections (a) and (b): No changes.**

**(c) When Physical Appearance Is Required.** The defendant's physical appearance (or remote appearance in the court's discretion) is required at the arraignment (if one is held), at every stage of the trial including empaneling the jury, returning the verdict, imposing the sentence, and at hearings set by the court upon a finding of good cause, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

**Sections (d) and (e): No changes.**

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