

First Joint Comment to Chelan County District Court Local Rules Changes 2023.

The undersigned attorneys join in presenting the first set of comments to the Chelan County District Court Local Rule changes for 2023. The undersigned believe that the below rule changes either: 1) treat different parties appearing before the court unequally; 2) impose rules and requirements that conflict with state rules and/or case law; or 3) unduly impede the access to justice and in doing so increase the cost to the public for legal services rendered in Chelan County District Court.

Comments:

- 1) LGRLJ 1- This rule does nothing that is not already required of every licensed lawyer in the State of Washington. As a result, the undersigned interpret this rule as an attempt to interfere with a *pro se* litigants right to self-representation. By requiring *pro se* litigants to observe the same formalities (including attire) the court appears to be attempting to interfere with case law that establishes a constitutional right to self-representation, regardless of the financial ability to pay for and buy professional attire.
- 2) LGRLJ 2 – This rule threatens to jail attorneys for sending a text to a client, support staff, or a fellow attorney providing coverage, if the text is sent while the attorney is inside of a court room regardless of the text interfering with the operation of the court. More concerning is the fact that law enforcement and probation officers are excluded from this rule while constitutionally required defense attorneys are not. The prohibition states “attorneys” but the exception section is silent on the word attorney, as a result this rule appears to treat attorneys differently than court staff (probation) and members of the prosecution team (law enforcement). We are proposing that this rule simply prohibits the use of electronic devices if the use disrupts the court.
- 3) LCrRLJ 3.2 (0) – This rule unnecessarily deprives an individual to the right to bail simply on the basis of having been convicted of drinking a beer and driving home at age 16 regardless of the offender’s current age. State law (RCW 10.21.055) already mandates a no bail hold for individuals with prior DUI offenses as defined by RCW 46.61.5055. The court appears to be attempting to circumvent the legislature by expanding the legislatively imposed mandate beyond DUIs and including Minor Operating a Motor Vehicle After Having Consumed Alcohol. The undersigned believe the rule was appropriate as previously written. If the court wishes to still amend the rule, then the undersigned recommends removing RCW 46.61.503 from the rule.


- 4) LCrRLJ 3.3 (f) – This rule ignores the reality of the natural progression of criminal cases through the district court system. The undersigned believe it is unnecessary to require a written and signed affidavit to continue a pre-jury hearing while the parties exchange discovery or negotiate the case. This rule as written does not apply to trials only. If that is the court's attempt, then it should clarify that. Even if it is not the court's attempt to limit this rule to cases set for trial, the undersigned do not believe a signed affidavit and a written motion is needed to continue a matter if the litigating parties to the case agree it should be continued. This entire rule should be struck as it is unduly burdensome and increases the cost of litigation to the citizens of Chelan County.
- 5) LCrRLJ 3.4 – The undersigned believe much of this rule increases the access to justice gap and is not necessary. A defendant that must appear simply for his or her attorney to set the matter for trial is an undue burden on those with jobs, dependents, and marginalized members of the community thus furthering the implicit discrimination and bias in the criminal justice system as flagged by the Washington Supreme Court. The same applies to the majority of the required hearings that the court attempts to find blanket good cause. Furthermore, in *State v. Gelinis* the court clearly set forth the expectation for defendant's appearances in district court hearings. In *Gelinis* the court made it clear that a defendant does not need to appear if the lawyer is able to appear on behalf of the defendant and move the case forward. Even if the guidance of *Gelinis* is to be disregarded, the undersigned attorneys also believe that CrRLJ 3.4(c) does not allow a blanket finding of good cause for every hearing in district court. The rule specifically states that personal appearance is only required at arraignment, the trial, "and at hearings set by the Court upon a finding of good cause.. " *See* CrRLJ 3.4(C). The language "upon a finding of good cause" clearly requires a specific finding of good cause to require an in-person appearance by the defendant. GR 7(b) requires the court to adopt rules that are consistent with the rules adopted by the Supreme Court. We do not believe this rule is. The previous rule was appropriate and should not be changed.
- 6) LCrRLJ 4.1 – The court should not require a defendant to appear for an arraignment when the defendant's attorney has filed the appropriate pleadings to address the arraignment. This rule once again appears to impose undue burden on those with job's, dependents, and marginalized members of the community thus furthering the implicit discrimination and bias in the criminal justice system as flagged by the Washington Supreme Court. *See also*, Johnson, Aleksandrea (2020) "Decriminalizing Non-Appearance in Washington State: The Problem and Solutions for Washington's Bail Jumping Statute and Court Nonappearance," *Seattle Journal for Social Justice*: Vol. 18:

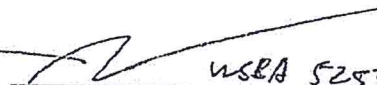
Iss. 2, Article 18. at page 441 ("many [defendants] fail to appear ... because they are unable to obtain reliable transportation, have other competing responsibilities (such as work, care for a child or another person)... factors associated with failure to appear include gender, race. ... A study on assessing race and gender-specific predictors of failing to appear found that 'indigency had a positive significant impact on [failure to appear].'" In an open public letter, the Supreme Court called on all judges and lawyers to recognize implicit racial bias in the legal system and to work to eradicate it. See Washington Supreme Court letter dated June 4, 2020. This rule appears to ignore the Supreme Court's guidance.

- 7) LCrRLJ 4.5 – The undersigned do not believe that an entire case schedule needs to be mapped out at the first pre-jury hearing. Furthermore, this rule once again attempts to expressly require defendants along with their lawyers to attend every hearing. See comments 5 and 6.

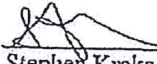
The above comments are not a complete list, and more comments will be presented once the undersigned are able to continue reviewing the proposed rule changes in further detail.

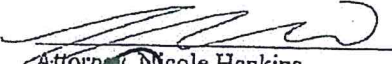
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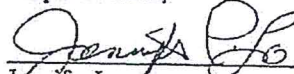

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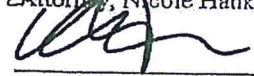
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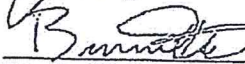
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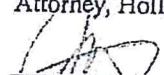
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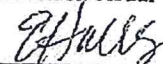

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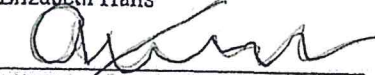

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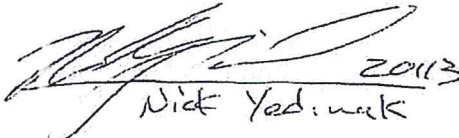

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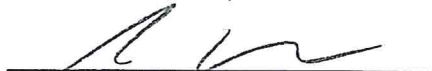
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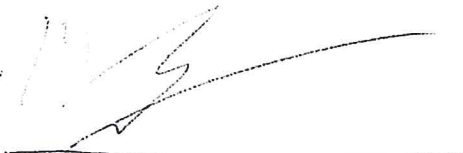
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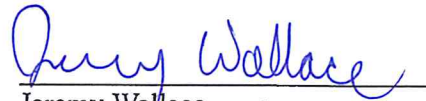
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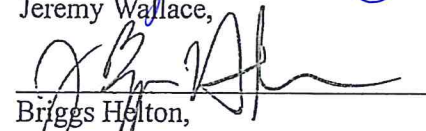
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