

The WSBA Court Rules & Procedures Committee is considering proposals to amend the following Superior Court Criminal Rules: CrR 1.3 – Effect; CrR 3.4 – Presence of Defendant; CrR 4.4 – Severance of Offenses and Defendants; and CrR 8.2 – Motion.

We are gathering information, both about the substance of the suggested changes and the language proposed. We'd like your input. You are receiving this email because you are a member of an identified stakeholder group, an individual who has expressed interest in proposed rule changes in the past, or you have been identified as someone with an interest in this area.

Attached are copies of the proposed amendments in redline and clean format. Please submit your written comments to WSBACourtRules@wsba.org. **Comments are due by May 25, 2018.**

Please feel free to forward this to any other person or group you think might be interested.

For questions or to discuss this rule further, you may contact Ann Summers, a member of the Committee, at 206-477-1909 or ann.summers@kingcounty.gov.



Sherry Lindner | Paralegal | Office of General Counsel

Washington State Bar Association | T 206-733-5941 | F 206-727-8314 | sherryl@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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SUGGESTED AMENDMENT
SUPERIOR COURT CRIMINAL RULES (CrR)

CrR 1.3 - EFFECT

1 ~~Except as otherwise provided elsewhere in these rules, o~~On their effective date:

2 ~~(a) Any acts done before the effective date in any proceedings then pending or any~~
3 ~~action taken in any proceeding pending under rules of procedure in effect prior to the effective~~
4 ~~date of these rules and any constitutional right are not impaired by these rules.~~

5 ~~(b) T~~hese rules also apply to any proceedings in court then pending or thereafter
6 commenced regardless of when the proceedings were commenced, except to the extent that in
7 the opinion of the court, the former procedure should continue to be made applicable in a
8 particular case in the interest of justice ~~or because of infeasibility of application of the~~
9 ~~procedures of these rules.~~

SUGGESTED AMENDMENT
SUPERIOR COURT CRIMINAL RULES (CrR)
CrR 3.4 – PRESENCE OF THE DEFENDANT

1 (a) [Unchanged]

2 (b) **Effect of Voluntary Absence.** The defendant's voluntary absence after the
3 trial has commenced in his or her presence shall not prevent continuing the trial to
4 and including the return of the verdict. A ~~corporation~~ legal entity other than a natural person may
5 appear by its lawyer for all purposes. In prosecutions for offenses punishable by fine only, the
6 court, with the written consent of the defendant, may permit arraignment, plea, trial and
7 imposition of sentence in the defendant's absence.
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9 (c) **Defendant not present.** If ~~a in any case~~ the defendant is not present when the
10 defendant's personal attendance is necessary as provided in subsection (a), or post-sentencing in
11 response to service of an order to appear or show cause, the court may order the clerk to issue a
12 bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other
13 cases. However, no warrant shall issue for failure to pay legal financial obligations unless, after a
14 hearing on the record, the court finds the failure to pay is willful.
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16 (d) – (e) [Unchanged]

SUGGESTED AMENDMENT
SUPERIOR COURT CRIMINAL RULES (CrR)
CrR 4.4 – SEVERANCE OF OFFENSES AND DEFENDANTS

1 (a) [Unchanged]

2 **(b) Severance of Offenses.** The court, on application of the prosecuting attorney, or
3 on timely application of the defendant pursuant to ~~other than under~~ section (a), shall grant a
4 severance of offenses whenever before trial or during trial with consent of the defendant, the
5 court determines that severance will promote a fair determination of the defendant's guilt or
6 innocence of each
7 offense.
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9 **(c) Severance of Defendants.**

10 (1) A defendant's motion for severance on the ground that an out-of-court statement of
11 a codefendant referring to him is inadmissible against him shall be granted unless:

12 (i) the prosecuting attorney elects not to offer the statement in the case in chief; or

13 (ii) deletion of all references to the moving defendant will eliminate any prejudice
14 to him from the admission of the statement.
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16 (2) The court, on application of the prosecuting attorney, or on application of the
17 defendant other than under subsection ~~(c)(1)(i)~~, should grant a severance of defendants
18 whenever:

19 (i) if before trial, it is deemed necessary to protect a defendant's rights to a speedy
20 trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a
21 defendant; or

22 (ii) if during trial upon consent of the severed defendant, it is deemed necessary to
23 achieve a fair determination of the guilt or innocence of a defendant.
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SUGGESTED AMENDMENT
SUPERIOR COURT CRIMINAL RULES (CrR)
CrR 4.4 – SEVERANCE OF OFFENSES AND DEFENDANTS

1 (3) When such information would assist the court in ruling on a motion for severance of
2 defendants, the court may order the prosecuting attorney to disclose any statements made by the
3 defendants which he intends to introduce in evidence at the trial.

4 (4) The assignment of a separate cause number to each defendant of those named on a
5 single charging document is not considered a severance. Should a defendant desire that the case
6 be severed, the defendant must move for severance.

7 (d) – (e) [Unchanged]

SUGGESTED AMENDMENT
RULES OF APPELLATE PROCEDURE (RAP)
RAP 5.2 – TIME ALLOWED TO FILE NOTICE

1 (a) [Unchanged]

2 **(b) Notice of Discretionary Review.** Except as provided in rules 3.2(e) and 5.2(d) and
3 (f), a notice for discretionary review must be filed in the trial court within the longer of (1) 30
4 days after the act of the trial court that the party filing the notice wants reviewed or (2) 30 days
5 after entry of an order deciding a timely motion for reconsideration of that act ~~under CR 59~~.

6 (c) – (g) [Unchanged]

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SUGGESTED AMENDMENT
SUPERIOR COURT CRIMINAL RULES (CrR)
CrR 8.2 – MOTIONS

1 Rules 3.5 and 3.6 and CR 7(b) shall govern motions in criminal cases. A motion for
2 reconsideration shall be filed not later than 10 days after the entry of the order or other decision.
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