Proposed Local Rule on ex-parte action submitted by Public Defender's Office

The Prosecuting Attorneys Office is strongly **opposed** to the proposed rule which is contrary to the state rule.

The Superior Court Criminal Rules apply to all criminal proceedings in superior court. State v. Jones, 46 Wn. App. 67 (1986). Local rules may not conflict with the statewide rules. Mabe v. White, 105 Wn. App. 827 (2001). All local rules must be consistent with the Supreme Court's rules. GR 7(c). "Inconsistent" means the local court rule is so antithetical that it is impossible as a matter of law that they can both be effective. State v. Chavez, 111 Wn.2d 548 (1988). The test for inconsistency is whether two rules may be reconciled and both given effect. Fernandes v. Mockridge, 75 Wn. App. 207 (1994); Hessler Constr. Co., Inc. v. Looney, 52 Wn. App. 110 (1988).

CrR 3.2(l)(i) provides that "on the court's own motion" **or** upon application by the prosecutor, the court "**shall** order the accused to appear for immediate hearing **or** issue a warrant directing the arrest of the accused for immediate hearing" to reconsider release.

The proposed rule seeks to limit CrR 3.2(l) as only applying in certain circumstances. It also seeks, apparently, to define "immediate hearing" as a hearing that occurs in a week. The proposed rule is not consistent with the Supreme Court's rule.

The proposed rule inhibits the ability of the Court to react quickly where the defendant has been shown to be in violation of the Court's orders – conditions which were imposed as part of less restrictive alternatives to detention pending trial. It requires findings by the trial court that the Supreme Court does not require to be made.

Where the trial court has imposed conditions of release as less restrictive alternatives to pretrial incarceration, and where the defendant has been shown to be violating those orders, the court has the ability under the Supreme Court rules to immediately address those issues. The trial court always has the ability, under the current Supreme court rule, to require that a hearing be held prior to any revocation of release where, in its discretion, it believes that to be appropriate.

Additional comments by various prosecutors within the prosecutor's office:

CrR 3.2 provides for a process in which the court may issue a warrant upon a showing of probable case that a defendant has violated conditions of release. The proposed rule, subsection A, would require the State to provide at least 5 days notice to defense upon filing a motion to revoke. This requirement would cause at least 5 days delay in the Court addressing the issue as the State would also have to note the matter on the Tuesday motion calendar following the 5th day. This may result in a potential violation not being

addressed until almost 2 weeks after the alleged violation occurs. This would allow a defendant to remain in the community when there has been a violation of the Court's order. This undermines the integrity of the Court's order and allows defendant's to delay or postpone answering for or addressing violations of the very conditions the Court itself imposed.

The Court sets conditions of release, generally after argument, based on a defendant's potential flight risk, risk of committing new offenses, risk of violence, etc. The proposed rule would create unclear guidelines for which condition violations would or could result in the issuance of a warrant versus require a hearing first. Violations of conditions are often fact or case specific and this proposed rule may lead to inconsistent application between judges. One judge may feel that a violation of a condition of no drug use may constitute a permissible violation while another may not.

If a defendant is out of custody on a violation of an EHM requirement, the rule would seem to require the State to note up a motion to revoke release because we cannot *prove* that the defendant will not respond to a summons. Meanwhile, we have no way of tracking the defendant's whereabouts as ordered by the court. If a defendant is out of custody on a condition that they be on SCRAM or alcohol monitoring and they have a tamper, this rule would also require notice and a hearing, all the while the defendant is not in compliance with the Court's order and the Court has no assurance the defendant is not consuming alcohol.

The proposed rule also requires 24 hours notice to the defense after issuance of a warrant, either for conditions of release, or new charges. While notice is certainly appropriate, the ability of the State to comply with the 24 hour requirement is entirely dependent on the Clerk's Office uploading the documents within that time frame. There is often a couple day delay in documents being uploaded to Odyssey so a time frame of 48 or 72 hours may be more appropriate.

As written, the proposed rule states that the five day notice is required, "absent a finding by a judicial officer, supported by an affidavit…" It is unclear based on the way the language is written if the affidavit is to be included as part of the motion to revoke release or increase bail or from a judicial officer in making their ruling. Additionally, the proposed rule states that the notice is not required when "…there is reasonable cause to believe the defendant will not appear in response to a summons, will commit a violent offense, or will interfere with witnesses or the administration of justice." The language as written does not necessarily contemplate that a defendant *has* actually committed a violent offense or *has*

interfered with a witness or the administration of justice, rather that they will commit a future one. If the rule is adopted, the language should be changed so as to encompass both the risk of doing such as well as actually doing such.