

## **Rule 8.2 Miscellaneous: Ex Parte Action and Notice**

- A. Motions to revoke a defendant's release or increase bail pursuant to CrR 3.2(l), shall be noted with 5 court days notice, and served on opposing counsel, absent a finding by a judicial officer, supported by an affidavit, that: 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
- B. When a party seeks any ex parte action in a case, other than the exception noted in (1) of this section, that party shall serve the opposing party, or their counsel, a copy of the ex parte action sought, and order granting or denying ex parte action, within 24 hours of the ex parte order being signed. Service may be by email. Personal service is not required.
  - (1) A party is not required to provide notice to the opposing party, if the motion is accompanied by a motion to seal and the court orders sealing. This includes, but is not limited to, defense motions to fund services under CrR 3.1(f) where the motion and order is sealed.
- C. When the state seeks a warrant upon the filing of new charges pursuant to CrR 2.2, and the defendant is currently represented by defense counsel on an existing open criminal case in Skagit County Superior or Juvenile Court, the State shall serve counsel on the existing case with notice of the new filing and warrant within 24 hours of the warrant being signed. Service may be by email. Personal service is not required.

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### **Reason for this requested rule:**

The purpose of this rule is to ensure due process, including notice, to the defendant and defense counsel.

CrR 3.2(l) addresses Arrest for Violation of Conditions. It indicates:

Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (k).

This rule indicates the court has discretion to set a hearing or issue a warrant, yet does not provide criteria for when which option should occur. The proposed local rule is consistent with CrR 2.2(b), indicating the preference for a summons over a warrant, absent the presence of stated criteria: 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.

At times motions to revoke bail are based on new, misdemeanor, nonviolent charges. These situations can be handled by summons, affording the defendant due process before their liberty is restricted by a warrant, and afford defense counsel notice and time to respond, without jeopardizing community safety.

Subsection (c) is intended to advance judicial efficiency and economy. The rule does not limit the State's ability to file new charges by warrant pursuant to CrR 2.2, but requires the nominal additional requirement to notify counsel of record if one exists, on other pending Skagit County Superior Court matters. This speeds up the process of getting counsel appointed or retained on the new matter.

It is not uncommon for a defendant to receive new charges, and the defendant and defense attorney learning for the first time of the filing, when both appear on a pending matter weeks later in court.

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#### **RULE 4.1. APPEARANCES**

(a) In Person Appearances Required. All witnesses, including defendants who are providing testimony, are required to appear in person absent prior Court approval. Defendants are required to appear in person for arraignment, entry of plea of guilty, sentencing, and trial absent prior Court approval.

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#### **Reason for requested change:**

Current practice is to allow out of custody defendants to appear via ZOOM for arraignment, and the current court paperwork even indicates they may appear via ZOOM. The rule change is requested so that the rule reflects current practice. This change would not prevent a judge from ordering in a specific case that a defendant appear in person.