

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUGGESTED)
AMENDMENTS TO CrRLJ 2.1—COMPLAINT—)
CITATION AND NOTICE)
)
)
_____)

ORDER

NO. 25700-A-1373

The Washington Association of Prosecuting Attorneys, having recommended the suggested amendments to CrRLJ 2.1—Complaint—Citation and Notice, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2022.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2022. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

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ORDER

IN THE MATTER OF THE SUGGESTED AMENDMENTS TO CrRLJ 2.1—COMPLAINT—
CITATION AND NOTICE

DATED at Olympia, Washington this 5th day of October, 2021.

For the Court


González, C.J.

GR 9 COVER SHEET

Proposal to Repeal Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 2.1(c)

- A. Name of Proponent: Submitted by the Washington Association of Prosecuting Attorneys
- B. Spokesperson: Pam Loginsky, Staff Attorney
- C. Purpose:

Repeals the facially unconstitutional portion of CrRLJ 2.1 that authorizes judges to file criminal charges at the request of a citizen.

Two justices of the Washington Supreme Court issued a concurring opinion on August 26, 2021, in *In re Citizen Complaint by Thomas W. Stout v. Geene D. Felix*, No. 98613-4 (Aug. 26, 2021), in which they concluded that:

It is long past time for the wasteful pretense of citizen complaints to end. I would affirm the district court’s order of dismissal on the alternative basis that this and every citizen complaint case must be summarily dismissed with prejudice because CrRLJ 2.1(c) is unconstitutional on its face. I therefore respectfully concur only in the result.

Id., slip op. at 25 (Justice Yu, concurring).

A Lewis County Superior Court Judge ruled that CrRLJ 2.1(c) unconstitutionally violates the separation of powers doctrine and interferes with the prosecuting attorney’s core function of determining whether charges should be filed. *See In re Petition of Ware*, 5 Wn. App. 2d 658, 670, 420 P.3d 1083 (2018).

The judges who must apply the citizen complaint rule agree that it “violates the separation of powers doctrine, requiring a judge to serve as both prosecutor and judicial officer.” Letter from Judge David A. Steiner, President, Dist. & Mun. Court Judges’ Ass’n, to Justice Charles W. Johnson, Chair, Supreme Court Rules Comm. (Apr. 16, 2015), https://www.courts.wa.gov/court_Rules/proposed/2014Nov/CrRLJ2.1/Judge%20David%20A.%20Steiner.pdf. *See also* 4B Elizabeth Turner, *Washington Practice: Rules Practice* at 529-30 (8th ed. 2020) (discussing DCMJA’s 1996 request that CrRLJ 2.1(c) be repealed).

The Washington State Bar Association acknowledges that CrRLJ 2.1(c) violates the Washington constitution. *See* GR 9 Cover Sheet Submitted by the Board of the Washington State Bar Association (2014), https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ru

leId=388.

The facially unconstitutional rule has turned courts into

- forums for political theater, *see, e.g.*, Ferry County District Court, No. 19-17CV (seeking permission to file citizen complaint against Attorney General based on activity related to state initiative); Yakima County District Court, No. CITIZEN01 (same); Lower Kittitas County District Court, Nos. CITIZEN01 CZS through CITIZEN 22 CZS (22 of the same); Stevens County District Court, Nos. 20190002 through 20190045, 20190047 through 20190063 (61 of the same); Discontent over Washington gun laws leads group to talk of 'citizen's arrest' of Bob Ferguson, *Seattle Times*, Oct. 20, 2019, available at <https://www.seattletimes.com/seattle-news/politics/discontent-over-washington-gun-laws-leads-group-to-talk-of-citizens-arrest-of-bob-ferguson/> (last accessed Aug. 27, 2021);
- a means to harass, intimidate, and retaliate against victims of crimes and government servants, *see, e.g., In re Citizen Complaint by Stout v. Felix*, No. 98613-4 (Aug. 26, 2021) (seeking permission to charge a state employee of the Department of Children, Youth, and Families with a crime based upon her performance of her official duties); *State v. A.W.*, 181 Wn. App. 400, 326 P.3d 737 (2014) (defendant charged with raping child sought to have child charged with the offense of false reporting); 4B Elizabeth A. Turner, *Washington Practice: Rules Practice* at 529-530 (8th ed. 2020) (describing the motives underlying many applications for citizen complaints and the costs incurred by the targets);; Kitsap County District Court, No. Y14-04890 (seeking permission to file citizen complaint against Court of Appeals clerk based on refusal to file improper brief).

D. Hearing: None needed.

E. Expedited Consideration: Not requested.

1 **CrRLJ 2.1**

2 **COMPLAINT–CITATION AND NOTICE**

3 **(a) Complaint.**

4
5 (1) *Initiation.* Except as otherwise provided in this rule, all criminal proceedings shall be
6 initiated by a complaint.
7

8 (2) *Nature.* The complaint shall be a plain, concise and definite written statement of the
9 essential facts constituting the offense charged. It shall be signed by the prosecuting authority.
10 Allegations made in one count may be incorporated by reference in another count. It may be alleged
11 that the means by which the defendant committed the offense are unknown or that he or she
12 committed it by one or more specified means. The complaint shall state for each count the official
13 or customary citation of the statute, rule, regulation or other provision of law which the defendant
14 is alleged therein to have violated. Error in the citation or its omission shall not be ground for
15 dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the
16 defendant to his or her prejudice.
17

18 (3) *Contents.* The complaint shall contain or have attached to it the following information
19 when filed with the court:
20

21 (i) the name, address, date of birth, and sex of the defendant;
22

23 (ii) all known personal identification numbers for the defendant, including the Washington
24 driver's operating license (DOL) number, the state criminal identification (SID) number, the state
25 criminal process control number (PCN), the JUVIS control number, and the Washington Department
26 of Corrections (DOC) number.
27

28 **(b) Citation and Notice to Appear**

29
30 (1) *Issuance.* Whenever a person is arrested or could have been arrested pursuant to statute
31 for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting
32 officer, or any other authorized peace officer, may serve upon the person a citation and notice to
33 appear in court. Criminal citations shall be on a form entitled "Criminal Citation" prescribed by
34 the Administrative Office of the Courts. Citation forms prescribed by the Administrative Office
35 of the Courts are presumed valid.
36

37 (2) *Release Factors.* In determining whether to release the person or to hold him or her in
38 custody, the peace officer shall consider the following factors:
39

40 (i) whether the person has identified himself or herself satisfactorily;
41

42 (ii) whether detention appears reasonably necessary to prevent imminent bodily harm to
43 himself, herself, or another, or injury to property, or breach of the peace;

1 (iii) whether the person has ties to the community reasonably sufficient to assure his or her
2 appearance or whether there is substantial likelihood that he or she will refuse to respond to the
3 citation and notice; and
4

5 (iv) whether the person previously has failed to appear in response to a citation and notice
6 issued pursuant to this rule or to other lawful process.
7

8 (3) *Contents*. The citation and notice to appear shall include or have attached to it:
9

10 (i) the name of the court and a space for the court's docket, case or file number;
11

12 (ii) the name, address, date of birth, and sex of the defendant; and all known personal
13 identification numbers for the defendant, including the Washington driver's operating license (DOL)
14 number, the state criminal identification (SID) number, the state criminal process control number
15 (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number;
16

17 (iii) the date, time, place, numerical code section, description of the offense charged, the date
18 on which the citation was issued, and the name of the citing officer;
19

20 (iv) the time and place the person is to appear in court, which may not exceed 20 days after
21 the date of the citation and notice, but which need not be a time certain.
22

23 (4) *Certificate*. The citation and notice shall contain a form of certificate by the citing official
24 that he or she certifies, under penalties of perjury, as provided by GR 13, that he or she has probable
25 cause to believe the person committed the offense charged contrary to law. The certificate need not
26 be made before a magistrate or any other person.
27

28 (5) *Initiation*. When signed by the citing officer and filed with a court of competent
29 jurisdiction, the citation and notice shall be deemed a lawful complaint for the purpose of initiating
30 prosecution of the offense charged therein.
31

32 ~~————(e) **Citizen Complaints**. Any person wishing to institute a criminal action alleging a
33 misdemeanor or gross misdemeanor shall appear before a judge empowered to commit persons
34 charged with offenses against the State, other than a judge pro tem. The judge may require the
35 appearance to be made on the record, and under oath. The judge may consider any allegations on the
36 basis of an affidavit sworn to before the judge. The court may also grant an opportunity at said
37 hearing for evidence to be given by the county prosecuting attorney or deputy, the potential
38 defendant or attorney of record, law enforcement or other potential witnesses. The court may also
39 require the presence of other potential witnesses.~~

40 ~~————In addition to probable cause, the court may consider:—~~

41 ~~————(1) Whether an unsuccessful prosecution will subject the State to costs or damage claims~~
42
43

1 under RCW 9A.16.110, or other civil proceedings;

2
3 ~~—— (2) Whether the complainant has adequate recourse under laws governing small claims suits,~~
4 ~~anti harassment petitions or other civil actions;~~

5
6 ~~—— (3) Whether a criminal investigation is pending;~~

7
8 ~~—— (4) Whether other criminal charges could be disrupted by allowing the citizen complaint to~~
9 ~~be filed;~~

10
11 ~~—— (5) The availability of witnesses at trial;~~

12
13 ~~—— (6) The criminal record of the complainant, potential defendant and potential witnesses, and~~
14 ~~whether any have been convicted of crimes of dishonesty as defined by ER 609; and~~

15
16 ~~—— (7) Prosecution standards under RCW 9.94A.440.~~

17
18 ~~—— If the judge is satisfied that probable cause exists, and factors (1) through (7) justify filing~~
19 ~~charges, and that the complaining witness is aware of the gravity of initiating a criminal complaint,~~
20 ~~of the necessity of a court appearance or appearances for himself or herself and witnesses, of the~~
21 ~~possible liability for false arrest and of the consequences of perjury, the judge may authorize the~~
22 ~~citizen to sign and file a complaint in the form prescribed in CrRLJ 2.1(a). The affidavit may be in~~
23 ~~substantially the following form:-~~

24
25 THE STATE OF WASHINGTON)

26 _____) ss. _____ No. _____

27 COUNTY OF _____)

28
29 **AFFIDAVIT OF COMPLAINING WITNESS**

30
31 **DEFENDANT:**

32
33 Name _____

Name _____

34 Address _____

Address _____

35 Phone _____ Bus. _____

Phone _____ Bus. _____

36 Name _____

Name _____

37 Address _____

Address _____

38 Phone _____ Bus. _____

Phone _____ Bus. _____

1 Name _____ Name _____
2 Address _____ Address _____
3 Phone _____ Bus. _____ Phone _____ Bus. _____
4

5 ~~I, the undersigned complainant, understand that I have the choice of complaining to a~~
6 ~~prosecuting authority rather than signing this affidavit. I elect to use this method to start criminal~~
7 ~~proceedings. I understand that the following are some but not all of the consequences of my signing~~
8 ~~a criminal complaint: (1) the defendant may be arrested and placed in custody; (2) the arrest if~~
9 ~~proved false may result in a lawsuit against me; (3) if I have sworn falsely I may be prosecuted for~~
10 ~~perjury; (4) this charge will be prosecuted even though I might later change my mind; (5) witnesses~~
11 ~~and complainant will be required to appear in court on the trial date regardless of inconvenience,~~
12 ~~school, job, etc.~~

13
14 ~~Following is a true statement of the events that led to filing this charge. I (have)(have not)~~
15 ~~consulted with a prosecuting authority concerning this incident.~~

16
17 ~~On the _____ day of _____, 19____, at _____.~~
18 ~~(location)~~

19 -
20 -
21 ~~Signed _____~~

22
23 ~~SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19____.~~

24
25 _____
26 _____
27 Judge

28 **(d) (c) Filing.**

29
30 (1) Original. The original of the complaint or citation and notice shall be filed with the clerk
31 of the court.

32
33 (2) Time. The citation and notice shall be filed with the clerk of the court within two days
34 after issuance, not including Saturdays, Sundays or holidays. A citation and notice not filed within
35 the time limits of this rule may be dismissed without prejudice.
36