

Challenges and Relief From Judgment, RALJ 6.3.1—Transcript of Electronic Record, JuCR 7.3—Detention and Release, SPR 98.16W—Estates—Guardianship—Settlement of Claims of Minors and Incapacitated Persons, 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 July 2020.

(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 September 30, 2020. 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.

DATED at Olympia, Washington this 9th day of July, 2020.

For the Court


CHIEF JUSTICE

GR 9 COVER SHEET

**Suggested Amendment to
WASHINGTON STATE COURT RULES:**

GR 13

Submitted by the Submitted by the Board for Judicial Administration Legislative Committee, the Superior Court Judges' Association Legislative Committee, and the District and Municipal Court Judges' Association Legislative Committee

A. Name of Proponent: Judge Kevin Ringus, Chair, BJA Legislative Committee
Judge Jennifer Forbes, Co-Chair, SCJA Legislative Cmte
Judge Sean O'Donnell, Co-Chair, SCJA Legislative Cmte
Judge Paul Wohl, Chair, DMCJA Legislative Committee

B. Spokesperson: J Benway, AOC Legal Services

C. Purpose:

Recent legislation, 2019 c 132 § 2, resulted in the repeal of RCW 9A.72.085, which is referenced in GR 13 pertaining to the use of unsworn statements in lieu of affidavits. In GR 13, RCW 9A.72.085 provides an authentication process so that an unsworn statement can be treated as a sworn statement. In this way, the statute is similar to GR 30(d), enacted after GR 13, which also provides a method for signature authentication. Because GR 30 provides a method of authentication, the reference to RCW 9A.72.085 is no longer necessary and can be replaced with a reference to GR 30. This approach will avoid further potential amendments due to legislative changes and simplifies the amendment process.

D. Proposed Amendments:

[see below]

E. Hearing: A hearing is not recommended due to the technical nature of the amendment.

F. Expedited Consideration: Expedited consideration is requested to minimize confusion in the court and legal community.

PROPOSED AMENDMENT:

GR 13

USE OF UNSWORN STATEMENT IN LIEU OF AFFIDAVIT

(a) Definitions.

(a) Unsworn Statement Permitted. Except as provided in section (b) whenever a matter is required or permitted to be supported or proved by affidavit, the matter may be supported or proved by an unsworn written statement, declaration, verification, or certificate executed in accordance with ~~RCW 9A.72.085~~ GR 30. The certification or declaration may be in substantially the following form:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

(Date and Place) (Signature)

(b) Exceptions. [No changes.]

GR 9 COVER SHEET

Suggested Amendment to WASHINGTON STATE COURT RULES:

GR 30

Submitted by the Submitted by the Board for Judicial Administration Legislative Committee, the Superior Court Judges' Association Legislative Committee, and the District and Municipal Court Judges' Association Legislative Committee

- A. **Name of Proponent:** Judge Kevin Ringus, Chair, BJA Legislative Committee
Judge Jennifer Forbes, Co-Chair, SCJA Legislative Cmte
Judge Sean O'Donnell, Co-Chair, SCJA Legislative Cmte
Judge Paul Wohl, Chair, DMCJA Legislative Committee
- B. **Spokesperson:** J Benway, AOC Legal Services
- C. **Purpose:**

Recent legislation, 2019 c 132 § 2 and 2019 c 132 § 8, resulted in the repeal of two statutes referenced in GR 30, one effective in 2021 and one effective in 2019. To address the potential disruption caused by the legislative changes, and to prevent a legislative change necessitating a future rule change, GR 30 is proposed to be amended by (1) adding a definition that was previously provided by statute; and (2) removing an obsolete statutory reference.

(1) Definition of Digital Signature

GR 30(a) provides definitions, the first one of which is "Digital signature," which reads: "'Digital signature' is defined in RCW 19.34.020." The related comment states, "The form of 'digital signature' that is acceptable is not limited to the procedure defined by chapter 19.34 RCW, but may include other equivalently reliable forms of authentication as adopted by local court rule or general order." RCW 19.34.020 was repealed as of July 2019. On July 16, 2019, the Supreme Court issued General Order #25700-B-596 providing that due to the repeal of RCW 19.34.020, as of July 28, 2019 the definition of "digital signature for GR 30 is as provided in RCW 9A.72.085." Thus, it is necessary to address the definition of digital signature in GR 30(a)(1).

Rather than rely on a definition of digital signature that can be frequently modified through legislation, it would be a better practice to incorporate a definition of digital signature into the rule itself. The appropriate definition would seem to be the one that is referenced in the rule from the now-repealed RCW 19.34.020, which was then incorporated into the soon-to-be-repealed RCW 9A.72.085. Retention of the Comment that allows courts to provide their own "equivalently reliable forms of authentication" will allow continued flexibility for courts in this regard.

(2) Outdated Statutory Reference

GR 30(d) references RCW 9A.72.085 in the context of the authentication of electronic documents. RCW 9A.72.085 is repealed as of July 1, 2021. GR 30(d)(3) provides an authentication process for electronic documents. It provides, in relevant part, “All electronic documents signed under penalty of perjury must conform to the oath language requirements set forth in RCW 9A.72.085 and GR 13.”

Because the concern of GR 30(d)(3) is specifically the oath language of RCW 9A.72.085, which is also found in GR 13, the simplest solution seems to be to remove the reference to RCW 9A.72.085 and only reference the oath language of GR 13 (as amended). This would prevent amendments having to be made in the future in response to other legislative changes, and allows for judicial control over the procedure and language.

Relying on the oath language already found in GR 13 would also allow pattern forms to remain consistent, with no further amendments. The primary concern for pattern forms is that the statutory change failed to incorporate the use of “certify or declare” rather than just declare. Both terms are found in the forms and were added to address peoples’ concerns regarding swearing. See, e.g., *State v. Killian*, 2020 WL 365322 (Div. 2; Jan. 22, 2020) [unpublished decision]. By incorporating the proposed language it will obviate the need for several pattern form changes, thus avoiding expense and effort in that regard.

D. **Proposed Amendments:**

[see below]

E. **Hearing:** A hearing is not recommended due to the technical nature of the amendments.

F. **Expedited Consideration:** Expedited consideration is requested to minimize confusion in the court and legal community.

PROPOSED AMENDMENT:
GR 30
ELECTRONIC FILING AND SERVICE

(a) Definitions.

(1) "Digital signature" is defined in ~~RCW 19.34.020~~ an electronic signature that is a transformation of a message using an asymmetric cryptosystem such that a person who has the initial message and the signer's public key can accurately determine whether the:

(a) Transformation was created using the private key that corresponds to the signer's public key; and

(b) Initial message has been altered since the transformation was made.

(2) - (5) No proposed changes.

Comment

The form of "digital signature" that is acceptable is not limited to the procedure defined by ~~chapter 19.34 RCW~~ above, but may include other equivalently reliable forms of authentication as adopted by local court rule or general order.

(b) – (c) No proposed changes.

(d) Authentication of Electronic Documents.

(1) - (2) No proposed changes.

(3) An electronic document filed in accordance with this rule shall bind the signer and function as the signer's signature for any purpose, including CR 11. An electronic document shall be deemed the equivalent of an original signed document if the filer has complied with this rule. All electronic documents signed under penalty of perjury must conform to the oath language requirements set forth in ~~RCW 9A.72.085~~ and GR 13.

(e) No proposed changes.

GR 9 COVER SHEET

Suggested Amendment to WASHINGTON STATE COURT RULES:

CrR 2.2; 2.3; 3.2.1
CrRLJ 2.1; 2.2; 2.3; 3.2.1; 3.6
IRLJ 6.7
RALJ 6.3.1
JuCR 7.3
SPR 98.16W

Submitted by the Submitted by the Board for Judicial Administration Legislative Committee, the Superior Court Judges' Association Legislative Committee, and the District and Municipal Court Judges' Association Legislative Committee

- A. **Name of Proponent:** Judge Kevin Ringus, Chair, BJA Legislative Committee
Judge Jennifer Forbes, Co-Chair, SCJA Legislative Cmte
Judge Sean O'Donnell, Co-Chair, SCJA Legislative Cmte
Judge Paul Wohl, Chair, DMCJA Legislative Committee
- B. **Spokesperson:** J Benway, AOC Legal Services
- C. **Purpose:**
Recent legislation, 2019 c 132 § 2, resulted in the repeal of RCW 9A.72.085 (effective July 1, 2021), which is referenced in many statewide court rules, including the Superior Court Criminal Rules (CrR); the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ); an Infraction Rule for Courts of Limited Jurisdiction (IRLJ); a Rule for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ); a Juvenile Court Criminal Rule (JuCrR); and a Superior Court Special Proceedings Rule (SPR). Because identical oath language is found in GR 13, reference to that general rule can be substituted for the obsolete statutory reference when necessary.
- D. **Proposed Amendments:**
[see below]
- E. **Hearing:** A hearing is not recommended due to the technical nature of the amendment.
- F. **Expedited Consideration:** Expedited consideration is requested to minimize confusion in the court and legal community.

PROPOSED AMENDMENT:

CrR 2.2

WARRANT OF ARREST AND SUMMONS

(a) Warrant of Arrest.

(1) *Generally.* [No changes.]

(2) *Probable Cause.* Before ruling on a request for a warrant the court may require the complainant to appear personally and may examine under oath the complainant and any witnesses the complainant may produce. A warrant of arrest may not issue unless the court determines that there is probable cause to believe that the defendant committed the offense charged. The court shall determine probable cause based on an affidavit, a ~~document~~ statement as provided in ~~RCW 9A.72.085~~ or any law ~~amendatory thereto~~ GR 13, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically, stenographically, or through any other reliable means. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) *Ascertaining Defendant's Current Address.* [No changes.]

(b) – (g) [No changes.]

PROPOSED AMENDMENT:

CrR 2.3

SEARCH AND SEIZURE

(a) – (b) [No changes.]

(c) Issuance and Contents. A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. The evidence in support of the warrant must be in the form of affidavits, a ~~document~~ statement as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, or sworn testimony establishing the grounds for issuing the warrant and may be provided to the court by any reliable means. Any sworn testimony must be recorded and made part of the court record and shall be transcribed if requested by a party if there is a challenge to the validity of the warrant or if ordered by the court. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purpose to affix the court's signature to a warrant identifying the property or person and naming or describing the person, place or thing to be searched. The court's authorization may be communicated by any reliable means. A record shall be made of any additional evidence on which the court relies. The warrant shall be directed to any peace officer and shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property or person specified. The warrant shall designate the court to which the warrant shall be returned. The warrant may be served at any time

(d) – (f) [No changes.]

PROPOSED AMENDMENT:

CrR 3.2.1

**PROCEDURE FOLLOWING WARRANTLESS ARREST—
PRELIMINARY HEARING**

(a) Probable Cause Determination. [No changes.]

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in CrR 2.2(a). If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for subsequent court hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the crime alleged, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits, ~~documents~~ statements as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Evidence may be provided by any reliable means. Sworn testimony shall be recorded electronically, stenographically or through any other reliable means. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations, and may be hearsay in whole or in part. The court's probable cause determination may be recorded by any reliable means.

(c) – (f) [No changes.]

PROPOSED AMENDMENT:
CrRLJ 2.1
COMPLAINT--CITATION AND NOTICE

(a) Complaint. [No changes.]

(b) Citation and Notice To Appear.

(1) – (3) [No changes.]

(4) *Certificate.* The citation and notice shall contain a form of certificate by the citing official that he or she certifies, under penalties of perjury, as provided by ~~RCW 9A.72.085, and any law amendatory thereto~~ GR 13, that he or she has probable cause to believe the person committed the offense charged contrary to law. The certificate need not be made before a magistrate or any other person.

(5) *Initiation.* [No changes.]

(c) – (d) [No changes.]

PROPOSED AMENDMENT:

CrRLJ 2.2

WARRANT OF ARREST OR SUMMONS UPON COMPLAINT

(a) Issuance of Warrant of Arrest.

(1) *Generally.* [No changes.]

(2) *Probable Cause.* A warrant of arrest must be supported by an affidavit, a document statement as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically, stenographically or by any reliable method. The evidence shall be preserved. The court must determine there is probable cause to believe that the defendant has committed the crime alleged before issuing the warrant. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) *Ascertaining Defendant's Current Address.* [No changes.]

(b) – (g) [No changes.]

PROPOSED AMENDMENT:

CrRLJ 2.3

SEARCH AND SEIZURE

(a) – (b) [No changes.]

(c) Issuance and Contents. A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. An affidavit, a document statement as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, or sworn testimony establishing the grounds for issuing the warrant must be provided or transmitted to the court by any reliable method. Sworn testimony must be in writing, recorded, or otherwise preserved. The record shall include any additional evidence relied upon by the court. The recording, or a duplication of the recording, shall be a part of the court record and shall be provided if requested or if ordered by the court. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purposes to affix the court's signature to a warrant. The authorization of the warrant may be done through any reliable method. The warrant may be directed to any peace officer. The warrant shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place or thing named for the property or person specified. The warrant shall designate the court to which it shall be returned. The warrant shall be returned to the issuing court, filed in the court record and available for public review unless ordered sealed by the court. Unless otherwise designated by the issuing court, the warrant may be served at any time of day or night.

(d) – (g) [No changes.]

PROPOSED AMENDMENT:

CrRLJ 3.2.1

**PROCEDURE FOLLOWING WARRANTLESS ARREST—
PRELIMINARY HEARING**

(a) Probable Cause Determination. [No changes.]

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in CrRLJ 2.2(a). In making the probable cause determination, the court may consider an affidavit, a ~~document~~ statement as provided in ~~RCW 9A.72.085~~ ~~or any law amendatory thereto~~ GR 13, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony, including telephonic statements, shall be recorded electronically, stenographically, or by reliable method. The written or recorded evidence considered by the court may be hearsay in whole or part. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations. The court's probable cause determination may be recorded through any reliable method. If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for court hearing, the court shall proceed to determine whether probable cause exists to believe that the accused committed the crime alleged, unless this determination has previously been made by a court.

(c) – (g) [No changes.]

PROPOSED AMENDMENT:
CrRLJ 3.6
SUPPRESSION PROCEDURE

(a) Pleadings; Determination Regarding Hearing. Motions to suppress physical, oral or identification evidence other than motions pursuant to rule 3.5 shall be in writing supported by an affidavit or ~~document~~ statement as provided in ~~RCW 9A.72.085 or any law amendatory thereto~~ GR 13, setting forth the facts the moving party anticipates will be elicited at a hearing. If there are no disputed facts, the court shall determine whether an evidentiary hearing is required. If the court determines that no evidentiary hearing is required, the court shall set forth its reasons for not conducting an evidentiary hearing.

(b) Decision. [No changes.]

PROPOSED AMENDMENT:

IRLJ 6.7

IDENTITY CHALLENGES AND RELIEF FROM JUDGMENT

(a) Relief from Judgment. [No changes.]

(b) Identity Challenge.

(1) *Right Granted.* [No changes.]

(2) *Identity Affidavit.* A defendant moving to vacate a judgment for mistaken identification shall file an affidavit or certification under ~~RCW 9A.72.085~~ with the court in which the infraction was found committed and with the office of the prosecuting authority assigned to the court stating that he or she could not be the person identified by the citing officer as having committed the infraction, citing a factual basis for the assertion and stating that he or she was not served with the notice of infraction.

(3) – (6) [No changes.]

PROPOSED AMENDMENT:

RALJ 6.3.1

TRANSCRIPT OF ELECTRONIC RECORD

(a) – (c) [No changes.]

(d) Transcript Generally.

(1) *Form*. [No changes.]

(2) *Certification*. The person preparing the transcript shall certify or declare under penalty of perjury that it is true and correct in accordance with ~~RCW 9A.72.085~~ or any law amendatory thereof GR 13.

(3) *Disputes*. [No changes.]

(e) – (g) [No changes.]

PROPOSED AMENDMENT:
JuCR 7.3
DETENTION AND RELEASE

(a) Time for First Appearance Generally. [No changes.]

(b) Determination of Probable Cause. The court shall determine probable cause based on an affidavit, a document statement as provided in ~~RCW 9A.72.085~~ or any law amendatory thereto GR 13, or sworn testimony. The sworn testimony shall be electronically or stenographically recorded. The evidence shall be preserved. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(c) – (f) [No changes.]

PROPOSED AMENDMENT:

SPR 98.16W

**ESTATES—GUARDIANSHIP—SETTLEMENT
OF CLAIMS OF MINORS AND INCAPACITATED PERSONS**

(a) – (f) [No changes.]

(g) Attorney's Fees and Costs. Any attorney claiming fees, costs or other charges incident to representation of the affected person, from the claim proceeds or otherwise, shall file an affidavit or declaration under ~~RCW 9A.72.085~~ in support thereof. Copies of any written fee agreements must be attached to the affidavit or declaration.

(h) – (k) [No changes.]