KENT MUNICIPAL COURT

1220 S. Central • Kent, Washington 98032
Phone 253-856-5730
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Robert B. C. McSeveney, Judge
Glenn M. Phillips, Judge
Margaret M. Yetter, Administrator

April 30, 2008

Mr. Ronald Carpenter
Clerk of the Supreme Court
POB 40929
Olympia, WA. 98504-0929

RE: Proposed amendments to CrRLJ 4.1

Dear Mr. Carpenter,

I am writing in support of the proposed amendments to CrRLJ 4.1 as noted below.

I have been a municipal court judge for the City of Kent for the past fifteen years. In addition to being a member of the State Board for Judicial Administration, I also served as BJA co-chair. Additionally, I sat on the 2002 Court Funding Task Force and currently chair a DMCJA ad hoc committee charged with reviewing the alarming rates at which district and municipal court judges are being sanctioned by the Commission on Judicial Conduct.

During the past several years the Commission on Judicial Conduct has been sanctioning judges for procedural due process violations occurring primarily at arraignments. The CJC takes the position that it is a judicial ethics violation for a judge to engage in a pattern or practice which potentially implicates a defendant's due process rights regardless if there has been an actual complaint filed with the CJC or demonstrated prejudice to anyone. As a result, judges are being publicly reprimanded for practices brought on by the absence of counsel at arraignments.

In the CJC matters of In Re James J. Helbling (2006) and In Re Timothy Odell (2007) judges received sanctions for handing out a statement of rights form to defendants at arraignment hearings. Despite acknowledgement by defendant's signature that they had reviewed and understood this form, the judges were reprimanded for not requiring an oral acknowledgment as well. The irony of these sanctions is that there is no rule, statute or case that requires a judge to advise a defendant of their constitutional rights at arraignment. Providing attorneys at this stage of the proceedings would likely eliminate the dangers associated with what I see as "hybrid" arraignment practices being used throughout the state. Inherent in providing representation is that the lawyer has fulfilled his legal and ethical duties to his client for the arraignment advice and plea entry whether waived or not.

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The absence of prosecutors and defense attorneys at arraignment has resulted in a plethora of arraignment practices. Some courts do them via video, some conduct them as educational seminars and most of them hand out forms which vary in content from jurisdiction to jurisdiction. (Forms which are subject to CJC scrutiny as well) There is simply no uniformity in arraignment practices statewide in the courts of limited jurisdiction.

In the Fall of 2006, I met with the Kent City Attorney, Chief Criminal Prosecutor and Public Defender, urging them to begin appearing at arraignments. That invitation was initially declined on the basis that they felt that there was no rule or case law requiring their appearance. While declining to be present, the City continued to routinely file motions that they expected to be addressed in their absence. Among these were motions for bail, restrictive conditions of release and No Contact Orders. In effect the prosecutor was attempting to appear in abstentia and expecting the court to protect the interests of the City.

The city eventually realized the due process issues at stake and the importance of counsel at arraignments in light of the Clark County fiasco involving public defense representation and recent CJC reprimands. Prosecutors and public defenders have now been present at arraignments for the past 18 months. These hearings are extremely efficient, procedurally sound and could serve as a model for any other court.

I have read the posted comments opposing the proposed amendments to CrRLJ 4.1. These arguments are not new. The city and county opposition is based on incurring additional costs rather than the integrity of the system. No mention is ever made of the defendants constitutional rights or procedural due process. Those judges who oppose the new rules are typically appointed small rural court judges. I seriously question why a judicial officer would not support access to justice, the right to a lawyer, and proper court protocol in adversarial proceedings. None of these judges have articulated any downside or prejudice to their court operations by having both counsel present at arraignments.

In Kent, the public defender is provisionally appointed by the court to represent defendants at arraignment only. This representation is covered in the public defense services contract with the executive branch and under Chapter 10.101 RCW. In checking with the Washington State Bar Association ethics advisors, there is no difference in the ethical duties or responsibilities of a provisionally appointed lawyer versus a retained lawyer.

Now, when I conduct an arraignment, the case is called, both counsel step forward and the prosecutor asks for the defendant's true and correct name, serves the defendant with the complaint and advises him or her of the charge.

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The public defender typically acknowledges receipt of the complaint, waives formal reading and requests a jury trial. The court then asks the defendant if he or she understands their right to a lawyer and how to obtain a public defender. If the city has a bail request or asks for a No Contact Order or other restrictive conditions, then they are addressed. The public defender can argue against bail or propose other least restrictive options.
This arraignment practice parallels the procedure currently in effect in King County Superior Court. Having the prosecutor present is consistent with the ABA prosecutorial standards recommending that prosecutors "should ordinarily be present at a preliminary hearings where such hearing is required by law." ABA Standards for Criminal Justice 3-3.10(f).

The presence of the prosecutor and public defender also safeguards the dangers of current inconsistencies. It is simply the best model for all district and municipal courts. There should be no distinction between rural or full-time courts when it comes to the constitutional rights of defendants and the responsibilities of the government. The fact that some jurisdictions are staffed by part time judges is not an acceptable reason to compromise these rights and responsibilities.

Former Justice Talmadge once remarked in a concurring opinion that: "Our opinion today conveys a very strong message to the judiciary and local governments in Washington that the Supreme Court will not tolerate short cuts in due process..." Disclipline of Hammermaster, 139 Wn.2d 211 (1999). In Miranda v. Arizona Justice Earl Warren wrote "The cases before us raise questions which go to the roots of our concepts of American jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crimes." In the former decision, the judge and local government were engaged in practices repugnant to due process. In the latter, law enforcement and prosecutors claimed that Miranda rights would impede law enforcement and prosecutions. Clearly, that did not happen.

The opposition to the proposed amendments by many Washington cities and some rural court judges is not based on justice or due process. They are based solely on misguided financial priorities. I urge the Supreme Court to implement these proposed rule amendments. They will provide uniform arraignment practices and representation in both full-time and rural courts across the state. The rules will also virtually eliminate CJC procedural due process complaints.

I welcome further discussion on this important issue.

Judge Robert McSeveney

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OFFICE RECEPTIONIST, CLERK

To: McSeveney, Robert
Subject: RE:

Rec. 4-30-08

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-----Original Message-----
From: McSeveney, Robert [mailto:RMcSeveney@ci.kent.wa.us]
Sent: Wednesday, April 30, 2008 12:04 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: FW:

Here is the letter I just faxed to the court. This is a new operation we have here in Kent, so sending the scanned letter might provide better clarity.

Thanks.

-----Original Message-----
From: Courts-Admin-Copy-Room@ci.kent.wa.us
[mailto:Courts-Admin-Copy-Room@ci.kent.wa.us]
Sent: Wednesday, April 30, 2008 12:01 PM
To: McSeveney, Robert
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