

Faulk, Camilla

From: April Alexander [analexander@ci.renton.wa.us]
Sent: Tuesday, April 29, 2008 4:28 PM
To: Faulk, Camilla
Cc: Marty Wine
Subject: Comments regarding proposed court rule CrRLJ 4.1
Attachments: 42908 court rule.pdf

See attached letter from Mayor Denis Law, City of Renton. Hard copy letter to follow in mail.

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CITY OF RENTON

Denis Law, Mayor

April 29, 2008

Washington State Supreme Court
Clerk of the Supreme Court
Attn: Camilla Faulk
P. O. Box 40929
Olympia, WA 98504-0929

RE: City of Renton Comments – CrRLJ 4.1

Dear Madame Clerk:

Please accept the City of Renton's comments concerning the proposed amendments to the criminal rules for courts of limited jurisdiction (CrRLJ). Driving While License Suspended (DWLS) charges make up over 28% of the City of Renton's municipal court caseload. The City Administration believes that these proposed rules will drive costs in our criminal justice system and impose fiscal impacts to the city budget through extra hearings and staff time.

In addition, the proposed amendments suffer the following deficiencies:

1. **Erroneous Assumption.** These rules operate upon the erroneous assumption that courts of limited jurisdiction are routinely violating criminal defendants' rights. This is a sweeping generalization that is not necessarily based on fact. Further, the rules seem to assume that defendants cannot understand their rights when they are explained by the judge, but they will understand those rights when explained by a public defender. Finally, the rules seem to presume that prosecutors, when attending arraignments, will victimize the presumably ignorant defendant and seek pleas that are advantageous to the government. Based upon these erroneous assumptions, the proposed rules then establish an expensive, time consuming process that has the potential to victimize the defendants by requiring multiple extra court appearances.
2. **Counsel Required Before Arraignment.** The court rule presents the wrong emphasis by limiting the court from arraigning a defendant who appears without counsel if the defendant "is not represented and is unable to obtain counsel." There is no mention in the court rule about indigency, and there is no constitutional right for a non-indigent defendant to have counsel appointed. Courts are daily faced with the question of determining indigency, and would now face the question of what "unable to obtain" a lawyer means. Will the court have to accept any reason that the defendant chooses to give? City and county governments should not be required to provide a lawyer to a defendant that can obviously afford to pay for a



lawyer. This court rule would also require that a prosecutor be present when the appointed lawyer is present, thereby increasing the cost and significantly slowing the process while the appointed counsel discusses the defendant's rights with all court actors present. This element of the rule raises a myriad of questions, including what happens if the defendant refuses to speak with the public defender? The court then could not make the finding required by the rule that the defendant had the opportunity to consult with counsel who is present at arraignment; or, would that refusal satisfy the defendant's opportunity to consult?

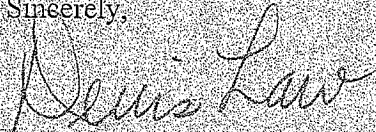
3. **The Defendant's Name.** The defendant is to be asked his or her name and if the defendant alleges (not under oath) that his or her name is different than the one on the charging document, the claimed name must be entered on the record and subsequent proceedings shall be by that name. The confusion that this will cause will consume many, many hours of court and attorneys' time. Today, defendants frequently use false names, often that of a sibling or relative. Now, even if the correct name has been used in the charging document, the defendant is presented an opportunity to utilize a false name and the court is required to use that name without standard of proof.
4. **Pro Se Guilty Pleas at Arraignment Will Be Eliminated.** After the court has required the defendant to speak with the public defender, it is hard to imagine that the public defender will advise the defendant to waive his or her right to counsel. One could argue that the public defender would be committing malpractice by advising the defendant to waive the right to counsel. Since the court can accept a guilty plea, unless there is a valid waiver of counsel, and the public defender will have advised the defendant not to waive that right, the defendant then will be required to make at least one additional court appearance, thereby consuming the time and resources of the defendant, the court, the public defender and the prosecutor. Today, we experience many times that the more manipulative defendants claim that they are "unable to obtain counsel."
5. **Unfunded Mandate.** These rules present cities and counties with a huge unfunded mandate. At a time when local governments must fund necessary programs with shrinking tax revenues, these rules will impose a decision on local governments to spend money on the arraignment process that appears to be unjustified and of little practical value. That money would be better spent in supporting public safety, disaster preparedness, and human services programs or any number of other programs.

In summary, this time consuming expensive process seems unwarranted and of little practical benefit. The cost will be great, the system will be cumbersome, and the benefit to defendants is questionable. The proposal's basis is that the defendant cannot understand the right to counsel and cannot make an intelligent decision unless that right is explained by a public defender who, faced with malpractice exposure, must counsel the

Ms. Camilla Faulk
Clerk of the Supreme Court
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defendant to obtain a lawyer. The City of Renton would oppose the proposed amendments to these rules as ill-advised, unnecessarily expensive, and imposing an unfunded mandate on cities and counties.

Sincerely,



Denis Law
Mayor

cc: The Honorable Terry Jurado, City of Renton Municipal Court
Renton City Council
Marty Wine, Assistant Chief Administrative Officer
Larry Warren, Warren, Barber & Fontes
Suzanne Dale Estey, Economic Development Director
Doug Levy