Faulk, Camilla

From: King, Vikki [Vikki.King@co.snohomish.wa.us]
Sent: Wednesday, April 30, 2008 9:09 AM
To: Faulk, Camilla
Subject: Response Letter Re CrR and CrRLJ Proposed Changes
Attachments: Response Letter Re CrR and CrRLJ Proposed Changes.pdf

This message is being sent on behalf of Janice E. Ellis, Snohomish County Prosecuting Attorney
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Attached please find a response letter from Janice E. Ellis, Snohomish County Prosecuting Attorney, regarding the proposed changes to the Criminal Rules for the Superior Court and the Courts of Limited Jurisdictions. This letter comments on the proposed changes to CrR 3.1, 4.1 and 4.2, as well as CrRLJ 3.1, 4.1, and 4.2.

Snohomish County
Prosecuting Attorney
Janice E. Ellis

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April 30, 2008

By U. S. Mail and by email to Camilla.Faulk@courts.wa.gov
Clerk of the Supreme Court
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Response to Proposed CrR and CrRLJ Rules Changes

Dear Clerk:

The Court published proposed changes to the Criminal Rules for the Superior Court and the Courts of Limited Jurisdictions in January 2008. This letter comments on the proposed changes to CrR 3.1, 4.1 and 4.2, as well as CrRLJ 3.1, 4.1, and 4.2.

I recognize that the amendments are inspired by a desire to provide greater protections to the criminally accused. While the suggestions are well-intentioned, some of them are nevertheless problematic. Fundamentally, because of the fiscal impact of many of the proposed changes, the amendments should be adopted by the Legislature – not the Court - and only after sufficient funds are provided to cities and counties to allow for the successful implementation of the rule changes.

The changes proposed for CrRLJ 4.1 will require prosecutors and defense counsel to be present at hearings that they are not currently required to attend. Additionally, language proposed for CrR 4.1 will effectively require limited appearance counsel to be present at all Superior Court arraignments. Without funding to support the staff necessary to meet these responsibilities, prosecuting authorities and public defense entities will be required to reallocate their resources from higher priority endeavors. The change will also compromise flexibility the court system and all of its participants may need in the event of an economic downturn.

Additionally, not all of the impacts are fiscal. Some are simply bad policy. For example, the proposed amendments to CrR 3.1(d)(4) and CrRLJ 3.1(d)(4) will put courts in the uncomfortable position of passing on the skills and abilities of public defenders and other appointed counsel. An attorney who is licensed to practice law presumably meets the minimum requirements necessary to represent an individual who is accused of a misdemeanor or gross misdemeanor offense. Nevertheless, in all situations, the responsibility for this determination should rest with the employing and/or

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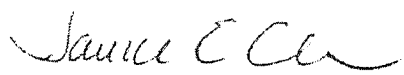
appointing entity, not the Court. In Snohomish County, this function is fulfilled by the Public Defender's Association and/or the Office of Public Defense. Both are highly professional organizations and both do an excellent job ensuring that their clients are appropriately represented.

With respect to the proposed changes to both CrR and CrRLJ 4.2, I do not object to the principle that a guilty plea should not be accepted from a *pro se* defendant unless there is a waiver on the record sufficient to establish that he/she has knowingly, voluntarily and intelligently given up his/her right to counsel. However, I do take issue with the statement in Mr. Boruchowitz's April 25, 2008 email to Camilla Faulk wherein he opines that the "[e]thics rules are clear that prosecutors should not be negotiating pleas with unrepresented defendants." The Rules of Professional Conduct, which he quotes, do not establish that ethical standard. Rather, they direct prosecutors to make reasonable efforts to assure that the defendant is aware of his/her rights as well as an opportunity to obtain counsel. Prosecutors may and must be able to resolve cases with self-represented individuals.

Finally, the "true name" provision of CrRLJ 4.1(e) is unnecessary and will likely result in fraud and vexatious practices. For example, we periodically encounter individuals who adopt aliases for one reason or another. Snohomish County had an individual involved in our court system who wanted to be addressed as "Fnu Lnu" (an alias for "First Name Unknown, Last Name Unknown"). Similarly, we had a defendant who wanted to be addressed as "Ambassador." He sought the designation because he wanted the court to accept that he was an Ambassador from the Embassy of Heaven – a position that he said entitled him to diplomatic immunity (or, alternately, that insulated him from the jurisdiction of any U. S. court other than the United States Supreme Court). The proposed amendment to CrRLJ 4.1 will only encourage these behaviors. It will also smooth the path for identity thieves and others to commit fraud on the court and others. This proposed amendment should be rejected.

I hope these observations are of some assistance.

Very truly yours,



Janice E. Ellis
Snohomish County Prosecuting Attorney