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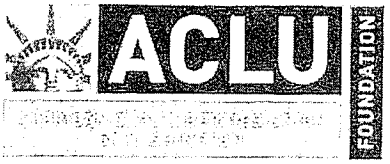

August 14, 2007

The Honorable Charles W. Johnson
Rules Committee Chair
Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Criminal Arraignment Rules

Dear Justice Johnson:

AMERICAN CIVIL
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The ACLU writes with regard to the proposed amendment to CrRLJ 4.1, which was published for comment on April 24, 2007. The goal of the proposed rule is laudable: to improve the administration of justice by ensuring access to counsel at this critical stage of the proceedings. However, the ACLU believes that this goal would be better served by the competing proposal developed by the Washington State Bar Association's Committee on Public Defense (which was endorsed by the WSBA Rules Committee on June 18 and the WSBA Board of Governors on July 28). We therefore respectfully request that the Court not adopt the published CrRLJ 4.1. Instead, the Court should move toward enactment of the rules suggested by the Bar Association.

Access to counsel at criminal arraignment is standard practice in most superior courts and many courts of limited jurisdiction. Unfortunately, a minority of courts do not ensure this important component of the criminal justice system. A court rule that explicitly commands the presence of counsel at arraignment can avoid the serious abuses described in cases such as In re Disciplinary Proceeding Against Michels, 150 Wash.2d 159, 75 P.3d 950 (2003) and In re Disciplinary Proceeding Against Hammermaster, 139 Wash.2d 211, 985 P.2d 924 (1999). An "attorney-of-the-day" system for arraignment counsel has proven very effective in many counties. It ensures that those defendants who wish to resolve their charges with a guilty plea are able to do so with advice of counsel. Courts have confidence that any waivers of constitutional rights are more likely to be knowing, intelligent, and voluntary when defendants have had an opportunity to consult with arraignment counsel who is present in the courtroom. And judges are not placed in the awkward situation of answering questions from unrepresented defendants that would be better directed to counsel.

With that said, there are a few important differences between the proposed rule and the WSBA rule that convince us that the WSBA rule is superior.

First, the proposed CrRLJ 4.1 calls for judges to advise defendants of their right to counsel, but does not ensure that counsel are actually present for immediate consultation. Without such language, a currently occurring scenario could persist, where a defendant is forced to choose between entering an uncounselled guilty plea or waiting

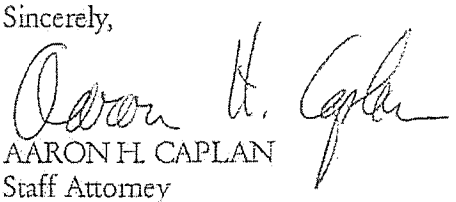
in detention -- perhaps for more days than the sentence would be -- for counsel to be appointed.

Second, the proposed CrRLJ 4.1 is not accompanied by parallel changes to CrR 4.1. The WSBA proposal would make practices largely consistent in superior courts and courts of limited jurisdiction.

Third, the proposed CrRLJ 4.1 is silent regarding the presence of the prosecutor at arraignment. The ACLU believes that it is important for the rule of law and the integrity of the adversarial system for the prosecuting authority to be represented at arraignment. In the absence of a prosecutor, the judge must inevitably take on the role of the prosecutor as the authority figure moving the case forward. This risks detracting for the desired appearance of a judge as an arbiter of positions advanced by others. Absence of the prosecutor may also make it difficult to complete plea bargains or other resolutions on a first appearance, resulting in greater costs and lengthier periods of costly incarceration over the course of a case. The citizens of a jurisdiction also have an interest in having their prosecuting attorney present at arraignment to advocate for measures that relate to public safety (such as bail, conditions of release, or plea bargaining).

We commend the Court for recognizing that a problem exists in some jurisdictions, and that a rule change can help address it. Because the arraignment rules proposed through the WSBA's Committee on Public Defense will best serve the citizens of the state, we encourage the Court to pursue that set of rule changes.

Sincerely,



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