



April 19, 2010

Mr. Ronald Carpenter
Clerk of the Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

RE: Comments on Proposed Amendment to CrRLJ 4.1

Dear Mr. Carpenter:

The Association of Washington Cities and the Washington State Association of Municipal Attorneys would like to provide comments on the proposed changes to court rule CrRLJ 4.1 and incorporate the comments we provided to the rules committee in 2008 and 2009 on similar proposals. In a letter to the Court Rules Committee last fall, we expressed that this latest proposal submitted for review by the District and Municipal Court Judges Association takes into account many of the concerns addressed in our comments on previous proposals regarding requiring the presence of public defenders at arraignments or first appearances.

In particular, we recognize that this proposal seeks to address local control, further clarify the intent to limit the new requirements to the constitutional mandates of presence of counsel, and recognize the unique circumstances in the processes cities and counties use to conduct their courts around the state. While these changes significantly decrease the impact of this proposed rule for the cities that already assign a public defender to arraignments, it will still impact some cities. **It would most likely be hardest felt by smaller jurisdictions, which are less likely to have a public defender present at all arraignments and which may contract with a provider who may serve several cities.**

First, we appreciate that the proposal does not link attendance by the prosecutor at all arraignments and first appearances, unlike prior proposals. This would have been a significant new unfunded mandate on local governments that is not constitutionally required, and cities continue to believe that local courts and communities can better assess when prosecutor's attendance is in the interests of better court administration and justice.

Second, we support the addition of language clarifying that the rule's application for presence of public defense is limited to those cases involving indigent defendants, reflecting the constitutional standards. While many cities have chosen to assign a public defender to an arraignment calendar to be available to any defendants who are present, in part through the assistance of state grant funding through the Office of Public Defense, it is not practical or possible in other jurisdictions. Other cities have developed other screening mechanisms for determining eligibility for public defense in accordance with constitutional mandates that also help limit costs and maximize efficiency.

We would note that the proposed rule still seems to require the physical presence of the public defender in the courtroom to meet the revised definition an arraignment under the counsel and waiver provisions. In the survey of cities conducted by AWC in 2007 on a similar proposal, several cities indicated that while their defender is not physically present, they may be available by phone or other electronic means. Particularly in the smaller jurisdictions, where the same contract public defender may be responsible for duties in several courthouses in remote locations, it may be impossible for the public defender to cover all such calendars if their physical presence were required. The alternative of delaying until another calendar may result in delayed resolution of a charge or increased court or public defense costs.

We would also note that cities are facing dramatic choices regarding maintaining services during this prolonged recession. The need for local governments to provide more services with increased caseloads in spite of decreasing revenues is facing most if not all local governments.

We continue to believe that **any new requirements should be accompanied by state funding necessary to implement the proposed rules.** Cities worked with the courts, judges, the State Bar Association and counties several years ago to support state funding for public defense services in our state's courts. The 2009 Status Report on Public Defense in Washington State documents that those funds have been successfully used to facilitate

efficiencies in court administration and increase the quality of public defender services. In several cases, the funds were used to decrease public defender caseloads and to provide an assigned public defender for arraignments. **However, the report also shows that this was not even possible in all the jurisdictions that received the limited grant funding.** We continue to believe that the cooperative approach that created the grant program is a preferred method of providing incentives to ensure representation of indigent defendants. However, in these times of budget reductions, we also recognize that those grant funds may be in more demand by more jurisdictions, without sufficient state resources to meet the increased need.

Finally, we **urge the court to consider the fiscal constraints impacting local governments** and the state at the present time, **particularly for the smaller jurisdictions** that may need to revise their contracts and budget for additional defense and court costs, should this rule be adopted.

Sincerely,



Heidi Wachter
President
Washington State Association of Municipal Attorneys



Mike McCarty
Chief Executive Officer
Association of Washington Cities