

Faulk, Camilla

From: Dennis Burman [dburman@premier1.net]
Sent: Sunday, December 20, 2009 2:32 PM
To: Faulk, Camilla
Subject: Comments regarding proposed changes to CrRLJ 4.1

Comments regarding proposed changes to CrRLJ 4.1

(a)(1) For someone who is subject to conditions of release, what is the result if there is no timely arraignment, whether due to the court's fault or the failure of the defendant to appear?

(b) Why is the word "party" rather than "defendant" used? Is it meant to include the prosecutor or the defendant's attorney?

Under CrRLJ 3.3(a)(1) it is the responsibility of the court to ensure a speedy trial to a defendant. May the judge object to an untimely arraignment date on behalf of the defendant?

It should be the obligation of the court to inform a defendant who chooses to go ahead with an arraignment without an attorney being present that the defendant has the right to object to the date of the arraignment, that any such objection must be done at that time, and that the objection is waived if not then made. Otherwise the right to object is worthless as many arraignments occur without an attorney being present and the defendants won't know about objecting.

(c) Does "without counsel" in (c) and (d) mean without counsel present, without counsel of record, or both?

When is counsel to be assigned due to indigence? The rule sounds as if the court is to make the determination of indigence at the time of the scheduled arraignment, but my understanding is that sometimes a defendant is sent somewhere else, often in another city, where the determination of indigence is subsequently made.

What does "unless otherwise provided" mean?

Is (c) inconsistent with (d)? If a defendant is not represented and is unable to obtain counsel due to indigence, "shall [counsel] be assigned to the defendant by the court" even if the defendant chooses to proceed without counsel? That is, does indigence mean that an attorney must confer with a defendant before the arraignment can take place?

(f) Does any court now provide a second copy of the citation to a defendant at arraignment as (f) requires?

(g) First of all, the title "Appearance by Defendant's Lawyer" may need to be reworded. Often the attorney will NOT be THE lawyer for the defendant, but a public defender who is helping out every defendant at a mass arraignment, such as at a jail.

Was this circumstance why "lawyer" is used here rather than "counsel" as used earlier in the rule?

Under those circumstances it seems unfair that any attorney that a defendant subsequently obtains has no ability to challenge defects in the citation. A public defender at a mass arraignment could easily miss any such defects.

It seems that part (g) is dealing with an appearance by an attorney, but the wording in portions of (g) is confusing. Subparts (1) – (4) simply use the word "appearance", but (6) refers to an "appearance by a lawyer".

Could it then be argued that “appearance” in (1) – (4) must mean something else? After all, “appearance” in subpart (a)(2) of the proposed rule refers to an appearance by the defendant, and that subpart expressly refers to CrRLJ 3.3(a)(3)(iii), where “appearance” is defined as “the defendant’s physical presence in the trial court”.

It seems better to either remove “by a lawyer” in subpart (g)(6) or perhaps better yet add “by a lawyer” to subparts (1) – (4).

For similar reasons, the use of “under this rule” in subparts (3) and (6) is confusing, given that “appearance” means by the defendant in parts of the proposed rule and means by an attorney in other parts of the proposed rule. Instead the words “under this part of the rule” or something similar should be used in order to confine these provisions to part (g).

Dennis Lee Burman
WSBA #7875
P.O. Box 1620
Marysville, WA 98270
(360) 657-3332