



WSBA  
BOARD OF GOVERNORS

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September 25, 2009

The Honorable Charles W. Johnson  
Temple of Justice  
PO Box 40929  
Olympia WA 98504-0929

RE: DMCJA proposed Revision to CrRLJ 4.1

Dear Justice Johnson:

The Washington State Bar Association supports the District and Municipal Court Judges Association's proposed revision to CrRLJ 4.1 with the additional revisions described below.

We propose revising CrRLJ 4.1(c) to include language requiring a finding that the person has made a knowing, voluntary, and intelligent waiver of counsel, as opposed to "otherwise provided," to clarify and to emphasize the need for a waiver before the court can proceed without counsel.

In CrRLJ 4.1(d), we propose changing "that" to "whether" because the court should be making an *inquiry*, not simply agreeing to a choice to proceed without counsel, but rather examining *whether* the choice is knowing, voluntary, and intelligent.

We propose the language on "thorough inquiry" because so many misdemeanor courts do a perfunctory inquiry, often with implied or explicit pressure on the defendant to waive counsel. The "thorough inquiry" language comes from State v. Chavis, 31 Wn. App. 784, 789 (1982):

An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry into the accused's comprehension of the offer and capacity to make the choice intelligently and understandably has been made.

Finally, while we have not yet submitted such a proposal, we suggest that the Superior Court Rule on arraignment, CrR 4.1 and CrRLJ 4.1 should be conformed to one another in future. However, we recognize that that process has not yet begun, and we believe that the misdemeanor court rule should be passed as soon as possible and should not be delayed due to lack of conformance.

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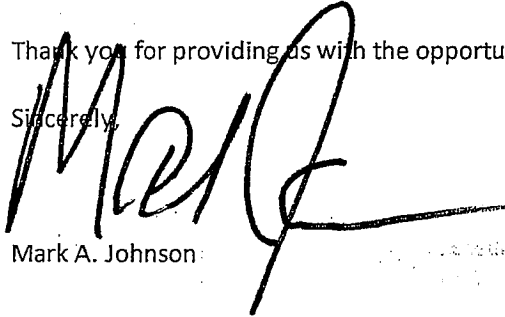
2505 Second Avenue, Suite 500 / Seattle, Washington 98121 • / fax: 206-682-0675

For your review we reproduce below the following:

- A redline combining the DMCJA's amended version, with WSBA changes overlaid on top and highlighted, deletions in double strikethrough and additions in bold.
- Clean versions of
  - The existing misdemeanor court rule
  - The DMCJA's proposed revision of the rule
  - WSBA's proposed revision to the DMCJA's proposal
  - The existing superior court rule as it would read if conformed with the DMCJA + WSBA version of CrRLJ 4.1.

Thank you for providing us with the opportunity to comment on this proposal.

Sincerely,



Mark A. Johnson

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Combined redline version with WSBA amendments overlaid (WSBA changes in double strike-through and bold and highlighted in yellow):

(c) Waiver Counsel

~~(1) Jury Trial. A waiver of jury trial at arraignment must be in writing and signed by the defendant. If the defendant waives a jury trial at arraignment, he or she must be advised of the right to withdraw the waiver and request a jury trial within 10 days of arraignment. If the defendant appears without counsel, the court shall inform the defendant of his or her right to have counsel before being arraigned. The court shall inquire if the defendant has counsel. If the defendant is not represented and is unable to obtain counsel due to indigence, counsel shall be assigned to the defendant by the court, unless otherwise provided the defendant makes a knowing, voluntary and intelligent waiver of counsel.~~

~~(2) Lawyer. If the defendant chooses to proceed without a lawyer, the court shall determine on the record that the waiver is made voluntarily, competently and with knowledge of the consequences. The defendant must be advised that waiver of a lawyer at arraignment does not preclude the defendant from asserting the right to a lawyer later in the proceedings.~~

~~(d) Name. At arraignment, the court shall ask the defendant his or her true name. If the defendant's name has been incorrectly stated in the complaint or citation and notice, the court shall order the complaint or citation and notice to be corrected accordingly.~~ Waiver of Counsel. If the defendant chooses to proceed without counsel, the court shall determine on the record that whether the waiver is made voluntarily, competently and with knowledge of the consequences. The court shall make a thorough inquiry of the defendant's understanding before accepting the waiver. If the court finds the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed.

~~(e) Appearance by Defendant's Lawyer. Except as otherwise provided by statute or by local court rule, a lawyer may enter an appearance or a plea of not guilty on behalf of a client for any offense. Such appearance or plea may be entered only after a complaint or citation and notice has been filed.~~ Name. Defendant shall be asked his or her true name. If the defendant alleges that their true name is one other than that by which he or she is charged, it must be entered in the record, and subsequent proceedings shall be had against him or her by that name or other names relevant to the proceedings.

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CURRENT RULE CrRLJ 4.1

RULE 4.1 ARRAIGNMENT

\* \* \* \* \*

(c) Waiver

(1) *Jury Trial.* A waiver of jury trial at arraignment must be in writing and signed by the defendant. If the defendant waives a jury trial at arraignment, he or she must be advised of the right to withdraw the waiver and request a jury trial within 10 days of arraignment.

(2) *Lawyer.* If the defendant chooses to proceed without a lawyer, the court shall determine on the record that the waiver is made voluntarily, competently and with knowledge of the consequences. The defendant must be advised that waiver of a lawyer at arraignment does not preclude the defendant from asserting the right to a lawyer later in the proceedings.

(d) *Name.* At arraignment, the court shall ask the defendant his or her true name. If the defendant's name has been incorrectly stated in the complaint or citation and notice, the court shall order the complaint or citation and notice to be corrected accordingly.

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DMCJA PROPOSED CHANGES TO CURRENT RULE CrRLJ 4.1

RULE 4.1 ARRAIGNMENT

\* \* \* \* \*

(c) *Counsel.* If the defendant appears without counsel, the court shall inform the defendant of his or her right to have counsel before being arraigned. The court shall inquire if the defendant has counsel. If the defendant is not represented and is unable to obtain counsel, due to indigence, counsel shall be assigned to the defendant by the court, unless otherwise provided.

(d) *Waiver of Counsel.* If the defendant chooses to proceed without counsel, the court shall determine on the record that the waiver is made voluntarily, competently and with knowledge of the consequences. If the court finds the waiver valid, an appropriate finding shall be entered on the record. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed.

(e) *Name.* Defendant shall be asked his or her true name. If the defendant alleges that their true name is one other than that by which he or she is charged, it must be entered in the record, and subsequent proceedings shall be had against him or her by that name or other names relevant to the proceedings.

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WSBA PROPOSED AMENDMENTS OF DCMJA PROPOSED CrRLJ 4.1

RULE 4.1 ARRAIGNMENT

\* \* \* \* \*

(c) **Counsel.** If the defendant appears without counsel, the court shall inform the defendant of his or her right to have counsel before being arraigned. The court shall inquire whether the defendant has counsel. If the defendant is not represented and is unable to obtain counsel, due to indigence, counsel shall be assigned to the defendant by the court, unless the defendant makes a knowing, voluntary and intelligent waiver of counsel.

(d) **Waiver of Counsel.** If the defendant chooses to proceed without counsel, the court shall determine on the record whether the waiver is made voluntarily, competently and with knowledge of the consequences. The court shall make a thorough inquiry of the defendant's understanding before accepting the waiver. If the court finds the waiver valid, an appropriate finding shall be entered on the record. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed.

(e) **Name.** Defendant shall be asked his or her true name. If the defendant alleges that their true name is one other than that by which he or she is charged, it must be entered in the record, and subsequent proceedings shall be had against him or her by that name or other names relevant to the proceedings.

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WSBA PROPOSED CONFORMING CHANGE TO CURRENT CrR 4.1

RULE 4.1 ARRAIGNMENT

(c) **Counsel.** If the defendant appears without counsel, the court shall inform the defendant of his or her right to have counsel before being arraigned. The court shall inquire whether the defendant has counsel. If the defendant is not represented and is unable to obtain counsel, counsel shall be assigned by the court, unless the defendant makes a knowing, voluntary and intelligent waiver of counsel.

(d) **Waiver of Counsel.** If the defendant chooses to proceed without counsel, the court shall determine whether this waiver is made voluntarily, competently and with knowledge of the consequences. The court shall make a thorough inquiry of the defendant's understanding before accepting the waiver. If the court finds the waiver valid, an appropriate finding shall be entered on the record. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed. If such claim for counsel is not timely, the court shall appoint counsel but may deny or limit a continuance.

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