Faulk, Camilla

From: Al Treacy [atreacy@marysvillewa.gov]
Sent: Monday, April 26, 2010 1:03 PM
To: Faulk, Camilla
Subject: Comment for IRLJ 3.1 Proposed Amendment.

Proposed Rule Committee,

As a city prosecutor, I am troubled by the soon-to-be adopted rule change to IRLJ 3.1. My concern is specific to the newly redacted "no other discovery shall be required" sentence in IRLJ 3.1 (b).

More so than not, the defense's discovery demand is akin to the "kitchen sink brief," that is, the defense bar will ask for pages of materials-traceability to NIST, speed measuring device calibration records, training procedures and officers' training records, history of usage for a particular speed measuring device-and the list goes on. Now, the latest demand is centered on GR 30 and proving that the officer actually used his/her personal I.D as an electronic signature.

As it stands now, the courts gloss over these types of demands as superfluous by hanging their hats on the current rule which only requires that the prosecutor provide two things: the officer's sworn statement and the names of witnesses not listed in the officer's sworn statement. If the prosecutor is not present at the infraction hearing the burden falls on the bench to keep the defense honest by denying a motion to dismiss for lack of discovery, provided of course the officer's statement and witness list was provided by the prosecutor. Because of the well established "no other discovery shall be required" rule, a motion to dismiss for lack of discovery is seldom raised by the defense and the "trial" can proceed on the merits.

That said, however, we all know that there is still a litany of motions the defense brings as a basis for suppression and dismissal that seems to grow every year as the defense bar gets more creative-hence the new GR 30 issue and challenging the electronic signature procedures. To this extent, both the bench and prosecutor must address these motions day in and day out that exhaust time, energy, and resources. In practice and to the extent that these motions are brought, the entire premise of IRLJ 1.1 (b) is decimated because the intent of the defense is everything but for a just, speedy and inexpensive hearing.

Now I am not advocating that the officer must not be diligent in doing his or his job but having to fight off a motion to suppress and dismiss because the officer didn't write "RCW" or spelled the defendant's last name incorrectly by one letter is borderline absurd. What I am saying, however, is that the premise of the IRLJ has been long lost and has morphed into a win at any cost mentality. For those of us who stand in the trenches and fight the good fight, if this amendment were to take place, our ability to win an infraction hearing will be so handicapped by the onslaught of discovery demands that our will to continue will slowly, but surely, fade away.

By not limiting the discovery to only those materials that are relevant, i.e., "no other discovery shall be required," the proposed change will require the bench (when no prosecutor is present) to sift through a discovery demand pleading and attempt to ascertain what is or what is not material or what is within the control of the prosecutor. And, even if a prosecutor is present, the "speedy" element of IRLJ 1.1 (b) should be tossed out the window.

The efficiency of the current system is dependent on the court moving cases along and not getting hung up on side issues that are calculated attempts to wear down the bench and to cause more work for the officers and prosecutors by forcing everyone to take the path of least resistance, that is, to give the defense attorney the Holy Grail of infractions-the coveted "no seat belt violation" as an alternative to a moving violation. If the IRLJ is amended as suggested, the committee might as well change IRLJ 1.1 (b) while they are at it because the purpose-to secure the just, speedy, and inexpensive determination of every infraction ticket, will be lost. The current rule change, as proposed, will create detrimental effect to the current state of infractions as they are litigated in court.

I appreciate your time,

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