

Louis Frantz
President

Teresa Mathis
Executive Director

April 29, 2015

Sent via email to supreme@courts.wa.gov

Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

RE: Proposed Rule CrRLJ 2.1(c)

Dear Justices of the Washington State Supreme Court:

The Washington Association of Criminal Defense Lawyers opposes the proposed amendments to CrRLJ 2.1(c), the elimination of the citizen complaints. Citizen complaints serve a vital purpose of allowing citizens to initiate criminal prosecutions when the local elected prosecuting official refuses to act.

The proponents of the amendment argue that the rule violates the separation of powers doctrine, and cite to *State v. Rice*. Rice was a school teacher who molested one of her students. She was charged with special allegations under multiple statutes. Rice argued that the special allegations were a violation of the separation of powers doctrine. The Washington Supreme Court found that the special allegations did not violate the separation of powers doctrine because the special allegations were directory, not mandatory.

It is not clear that the separation of powers doctrine is applicable in CrRLJ 2.1(c) because, if applicable, the citizen complaint process is directory, not mandatory. The judge may permit the bringing of charges. There are seven factors that the judge may consider before a charge is filed:

In addition to probable cause, the court may consider:

- (1) Whether an unsuccessful prosecution will subject the state to costs or damage claims under RCW 9A.16.110, or other civil proceedings;
- (2) Whether the complainant has adequate recourse under laws governing small claims suits, anti-harassment petitions or other civil actions;
- (3) Whether a criminal investigation is pending;

- (4) Whether other criminal charges could be disrupted by allowing the citizen complaint to be filed;
- (5) The availability of witnesses at trial;
- (6) The criminal record of the complainant, potential defendant and potential witnesses, and whether any have been convicted of crimes of dishonesty as defined by ER 609; and
- (7) Prosecution standards under RCW 9.94A.440.

There is nothing in the rule that suggests that the filing of any charge is mandatory. The citizen complaint process does not interfere with the prosecuting authority's decision making.

In *Rice*, in considering checks and balances, the court noted that the jury is a check on all three branches of government by its verdict. However, that citizen check applies only to the filing of charges and not to the non-filing of charges. The citizen complaint process is a check on the executive branch and the non-filing of charges. It does not interfere with those decisions. It merely supplements them when the executive branch refuses to act.

WACDL encourages the Supreme Court to retain the citizen complaint process and a citizen's right to contribute to government.

The image shows two handwritten signatures in black ink. On the left is the signature of Louis Frantz, which appears to be 'Louis Frantz' with a small flourish at the end. On the right is the signature of Kent Underwood, which is more stylized and includes a large loop at the end.

Louis Frantz
President

Kent Underwood
WACDL Court Rules Committee Chair

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, April 29, 2015 3:35 PM
To: Tracy, Mary
Subject: FW: Attached: Comments on CrRLJ 2.1
Attachments: Comments onCrRLJ 2.1 (2015).pdf

From: Fred Rice [mailto:fred.rice@wacdl.org]
Sent: Wednesday, April 29, 2015 3:33 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Attached: Comments on CrRLJ 2.1

To Whom It May Concern,

Attached to this email are comments regarding proposed changes to CrRLJ 2.1. I am submitting these comments on behalf of the Washington Association of Criminal Defense Lawyers.

Kind regards,

Fred Rice
Program Coordinator
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