

Faulk, Camilla

From: Tonia Proctor [Tonia.Proctor@cityoffederalway.com]
Sent: Wednesday, April 30, 2008 7:51 AM
To: Faulk, Camilla
Cc: Pat Richardson
Subject: Comments on CrLJ Rule 3.1(d)
Attachments: CrLJ rule 3.1(d).doc

Attached please find a letter from Ms. Patricia Richardson, City Attorney, on behalf of the City of Federal Way regarding the proposed changes to CrLJ Rule 3.1(d).

If you have any questions, please don't hesitate to contact me.

Thank you.

Tonia Proctor
Lead Paralegal / Risk
City of Federal Way
P.O. Box 9718
Federal Way, WA 98063
(253) 835-2561

253-835-2562

April 30, 2008

Mr. Ronald Carpenter
Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Transmitted Via E-mail: Camilla.Faulk@courts.wa.gov

Dear Mr. Carpenter:

On behalf of Federal Way, I am writing to express our concerns with proposed CrLJ Rule 3.1(d). We respectfully request that the Court not move forward with this Rule, which would require all appointed public defenders to demonstrate “proficiency, ability and commitment to quality representation” as set by the Standards for Indigent Defense Services endorsed by the Washington State Bar Association.

We have absolutely no objection to the underlying premise behind this rule, which is to ensure that indigent defendants are receiving high-level representation by defenders who are well-qualified. That is well worth supporting. But the Rule is not as simple as that.

First, we have a fundamental concern that *standards and guidelines* are being turned into *requirements*. In so doing, the Court would be issuing a rule that inappropriately undermines RCW 10.101.130, which requires cities and counties to adopt standards for delivering public defense services but stipulates that standards adopted by the WSBA “should serve as guidelines to local legislative authorities...”

Second, the standards appear to be designed for large public defender agencies and do not fit well with smaller jurisdictions and smaller public defense contracts. In our case, it has been difficult for the City to obtain the services of public defenders because very *few* respond to our published requests for qualifications. So we end up with a Rule based on standards for larger agencies, and a high likelihood that the cost of public defense contracts would increase substantially.

We are also unclear as to parts of the Rule that are standards not for individual counsel but for the public defender system as a whole. As an example, how would a judge ensure that a sole practitioner attorney is in compliance with Standard 11, which requires the

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attorney to be monitored and evaluated. Another example is Standard 10, which has to do with felony experience, and how that would be applied to a supervising attorney who only supervises attorneys handling misdemeanors.

We provide these examples because it seems to us that Rule 3.1(d) is a mandatory one-size-fits-all requirement that simply does not fit all agencies and all situations – particularly the ones we have illustrated above.

In closing, we want to again underscore that it is appropriate for a judge to ensure that a public defender is proficient and committed to quality representation. But there are other ways to achieve that under current law and current guidelines. Rule 3.1(d) creates more problems than it solves and opens up more questions than it provides answers. We ask that you decline to adopt it.

Thank you for your consideration.

Sincerely,

Sent without signature to avoid delay

Pat Richardson
City Attorney
City of Federal Way