



*Pend Oreille County*

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## DISTRICT COURT

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Hall of Justice

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*Philip J. Van de Veer*  
Judge  
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March 25, 2008

The Honorable Charles W. Johnson  
Chair, Rules Committee  
Washington Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: Comment to Proposed CrRLJ 3.1(D)(4)

Dear Justice Johnson,

Improving the quality of legal representation for indigent defendants is a necessary goal. Proposed CrRLJ 3.1(D)(4) will not help to achieve that goal.

1. CrRLJ 3.1(D)(4) conflicts with RCW 10.101.030, because it transforms "guidelines" for local standards into statewide mandatory requirements.

Washington cities and counties are required to adopt standards for delivering public defense services. The standards endorsed by the Washington State Bar Association "should serve as guidelines to local legislative authorities in adopting standards." RCW 10.101.030. Thus, each jurisdiction will adopt its own standards that, based on local needs and conditions, may vary with the bar association guidelines.

Proposed CrRLJ 3.1(D)(4) bypasses locally adopted standards. Each judge becomes a gatekeeper for determining the qualifications of public defenders by using statewide guidelines rather than locally adopted standards. This makes the Washington State Bar Association guidelines the default statewide standards. Judges will be compelled to ignore local standards and apply Bar Association guidelines even where the local standards vary from bar association guidelines.

2. The judicial duty imposed by CrRLJ (D)(4) expands the role of judges as outlined in the Standards for Indigent Defense Services.

The Standards for Indigent Defense Services envision a systematic monitoring and evaluation process in which performance evaluations "should be supplemented by comments from judges." (Standard Eleven). Judges play a supplemental role in the

process. Under proposed CrRJJ 3.1(D)(4), however, judges have the primary role of separately reviewing the Standards to determine whether a public defender meets the Standards.

In addition, Public defenders should only be terminated for good cause (Standard Sixteen). Under CrRLJ(D)(4), an attorney found by a court not to be in compliance with the Standards would not represent clients in that court. In small jurisdictions, this would be tantamount to termination without evaluation and good cause required by the Standards. This may create a separation of powers problem where the local county commissioners or city council creates standards and, based on those standards, contract with attorneys to provide defender services, only to have a court nullify the contract by separate review.

3. The Standards for Indigent Defense Services will be difficult for judges to apply.

The Standards for Indigent Defense Services include numerous criteria that will be difficult for a judge to employ in determining the qualifications of a public defender. Public defenders must provide services in a professional manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law and applicable court rules. (Standard Two). Misdemeanor public defenders must meet minimum qualifications set by the Washington Supreme Court, be familiar with statutes, court rules, constitutional provisions, case law, collateral consequences of a conviction, mental health issues, and complete continuing legal education requirements (Standard Fourteen). In addition, the public defender's workload may not interfere with quality representation (Standard Three). Public defenders must participate in regular training programs including a minimum of seven hours of continuing legal education relating to public defense practice (Standard Nine). Part time public defenders are limited in the amount of privately retained work they may perform (Standard Thirteen). Some of this information is not available to the judge.

4. CrRLJ 3.1(D)(4) sets special standards for a select segment of the bar.

The question is raised whether imposing separate standards for attorneys who represent indigent criminal defendants will be followed by judicial standards of review for prosecutors, plaintiff's attorneys, civil defense attorneys, attorneys who specialize in collections, etc.

In my opinion, setting specialized criteria violates the basic tenet that an attorney who has passed the Washington Bar is competent to practice law in Washington. If there is concern that attorneys are generally not qualified in a particular area of practice, then the solution is to implement a specialized bar examination rather than placing the burden of qualifying specialized attorneys on the judiciary.

Otherwise, judges undertake and usurp the role of the bar association in monitoring attorneys.

5. CrRLJ 3.1(D)(4) provides the opportunity for unnecessary ethics complaints against courts (translate judges).

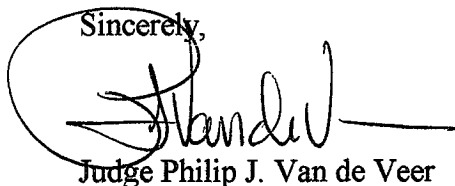
A disgruntled defendant can now file an ethics complaint against a judge alleging that the judge failed to properly determine that the defender qualified under the standards set forth in the Standards for Indigent Defense Services.

6. CrRLJ 3.1(D)(4) is unnecessary.

Judges have the current capacity to remove incompetent attorneys. Canon 3 of the Code of Judicial Conduct imposes a duty on judges to report lawyers who, pursuant to the Rules of Professional Conduct, may not be fit to practice. Rule of Professional Conduct 1.1, 1.3, 1.4 and others provide a sufficient standard to allow judges to adequately monitor the conduct of criminal defense attorneys.

I recommend that the Rules Committee decline to adopt CrRLJ(D)(4) in its entirety.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip J. Van de Veer", with a horizontal line extending to the right. The signature is enclosed within a hand-drawn oval.

Judge Philip J. Van de Veer