



WSBA
BOARD OF GOVERNORS

Salvador A. Mungia
President

phone: 253.620.6500
e-mail: smungia@wth-law.com

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Justice Charles Johnson
Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504

Re: Proposed Court Rule Changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2

Dear Justice Johnson:

On behalf of the Washington State Bar Association's Council on Public Defense (CPD), the Washington State Bar Association (WSBA) appreciates the opportunity to comment on the proposed court rule changes to CrR 3.1, CrRLJ 3.1 and JuCR 9.2 during the emergency 60-Day comment period. The CPD and WSBA greatly appreciate the Supreme Court's interest in ensuring that public defense attorneys appointed by judges are able to provide effective representation. The CPD discussed the proposed rule changes at their February 12th, 2010 general meeting.

The membership of the CPD includes prosecutors, defenders, law school professors, judges, local and state officials and private practitioners. One of the purposes of the Council is to regularly bring together professionals within the criminal justice system to seek consensus on ways to improve criminal defense services. Given sufficient time and the opportunity for more discussion, we are confident that the Council could provide valuable input in support of the goal of the proposed rule changes. Unfortunately, the Council had only one scheduled meeting during the comment period provided for by the expedited review schedule to discuss the proposed changes to CrR 3.1, CrRLJ 3.1 and JuCR 9.2.

That meeting occurred on February 12 and a number of concerns were expressed about the specific proposals, including:

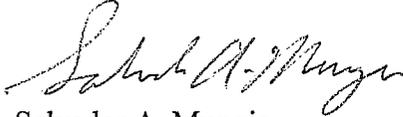
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- The proposed rules require that lawyers certify compliance with "the applicable Standards for Indigent Defense Services approved by the Supreme Court." However, the Supreme Court has not formally approved the Standards for Indigent Defense Services. Consequently, the predicate upon which a lawyer's certification would be based does not currently exist.
- Even assuming that the Supreme Court adopted the WSBA Standards for Public Defense Services, the reference to "applicable" Standards is viewed as problematic. It is not clear, for example, whether "applicable" refers to the type of case before the court or to particular standards. Consequently, the Council believes that further discussion will improve the process of validating the attorney's qualifications in a particular case.
- The Council members also expressed the need to further discuss the proposed rule changes with regard to their effective application to all types of public defense attorneys, including those in public defense agencies and those who serve as appointed counsel.

It is noteworthy that the different constituencies within the Council raised differing concerns in this review and, consequently, the Council determined that more discussion was needed. Accordingly, the Council and WSBA Board of Governors requests that the Supreme Court Rules Committee table the current proposals for revising CrR 3.1, CrRLJ 3.1 and JuCR 9.2 to allow further discussion of the above and other concerns.

Sincerely,



Salvador A. Mungia

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