

## Faulk, Camilla

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**From:** David A. Larson [David.Larson@cityoffederalway.com]  
**Sent:** Monday, October 31, 2011 12:15 PM  
**To:** Faulk, Camilla  
**Cc:** Rebecca Robertson  
**Subject:** Comments Regarding Proposed Standards for Indigent Defense Services

Dear Supreme Court Justices:

Our joint comments are limited to impacts on public defense in courts of limited jurisdiction.

Although it is understandable that the Bar and the Court would want to address deficiencies in public counsel representation due to some issues in parts of the state, the "cookie cutter" approach of these standards will be counter-productive and will punish counties and cities that are already providing ample indigent counsel services. One can be wholeheartedly behind properly funding indigent defense services yet still be opposed to these guidelines.

The proposed caseload limits amount to an unfunded mandate that most municipalities cannot absorb in these difficult fiscal times. The abuses that gave rise to these standards should be remedied on a case-by-case basis and not with a broad sweeping rule that does not recognize local issues or efficiencies. The standards also fail to recognize differences in lawyer experience. Many municipal public defenders are experienced and can handle a greater caseload more efficiently than a new attorney can. In sum, the standards address a complex issue too simplistically.

We also have a concern based upon legal considerations. We will confess that we did not recognize these issues during the comment period for CrRLJ 3.1(d)(4). Nevertheless, the legislature spoke in RCW 10.101.030 by giving local legislative bodies the authority to "adopt standards for the delivery of public defense services". The legislature further provided that the "standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards." (Emphasis added). The standards would be not be as much of a problem if they were treated as "guidelines" and not as a mandate under CrRLJ 3.1(d)(4).

The effect of CrRLJ 3.1(d)(4) is to strip local legislative bodies of their power to adopt standards under RCW 10.101.030 conveyed to them by the legislature. These rules require the lawyer, "to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court." See CrRLJ 3.1(d)(4).

Instead of the standards being used as a "guideline to local legislative bodies" as provided in RCW 10.101.030 they become a mandate by court rule. A local jurisdiction's adopted standards do not need to strictly comply with the bar's suggested standards under RCW 10.101.030. Yet, an attorney properly complying with the local standards adopted legally pursuant to RCW 10.101.030 that vary from the standards adopted by the Supreme Court would be violating CrRLJ 3.1(d)(4) because they could not certify that "he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court". The Supreme Court is essentially repealing RCW 10.101.030 by usurping the power of local legislative bodies to adopt local standards for public defenders to follow.

It is possible to reconcile the court rule and the statute by suggesting that "compliance" with local standards adopted by the local legislative body is sufficient even if those standards vary from those adopted by the Supreme Court. Reconciliation is also possible if the court exercises its power to approve the standards that would serve as guidelines to local legislative bodies under RCW 10.101.030. However, the literal language of CrRLJ 3.1(d)(4) does not seem to give room for such interpretations.

This paradox cannot be addressed solely upon the assertion of the court's power to adopt rules under RCW 2.04.190. The lines are blurred as to whether this issue is one of procedure and or one involving a substantive right. Nevertheless, even though the court could assert that it has the power to nullify RCW 10.101.130 through RCW 2.04.200, I am not sure

that the court wants this fiscal battle with the state legislature and local legislative bodies at this time. Instead, we need to look for ways to work together to guarantee the right to counsel across the state in the most cost-effective manner.

Thank you in advance for your consideration.

Sincerely,

Judge David Larson and Judge Rebecca Robertson  
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