

Faulk, Camilla

From: Donald Horowitz [don.horowitz@gmail.com]
Sent: Sunday, October 30, 2011 8:19 PM
To: Faulk, Camilla
Subject: My comments re Standards for Indigent Defense suggested pursuant to CrR 3.1, CrRLJ 3.1, and JuCR 9.2

Dear Ms. Faulk, and the Washington State Supreme Court,

I have carefully reviewed the proposed Standards for Indigent Defense submitted for suggested Supreme Court adoption, and have also reviewed the comments made by others which are available on the Court's website.

In over 52 years working in various sectors, roles and jobs in the justice system of this state, I have had a considerable variety of experience in both public and private law, and both civil and criminal law. Some of that experience is particularly relevant here. As a lawyer I personally handled a few cases involving the death penalty both in private practice and as a private attorney appointed by the court to handle the case. These were on the defense side and involved both trial and appellate work, as well as a major extradition hearing. As a private lawyer I also handled numbers of felonies and misdemeanors in both state and federal court on the defense side. In the late 1960's I was principal appellate counsel in the case and argument before this state's Supreme Court which challenged the constitutionality of the death penalty as it was then applied. In a related case from another state, the United States Supreme Court sustained the position which we argued here. Later, from 1970 through 1973, I became a government lawyer; I was the senior assistant state attorney general for the Department of Social and Health Services, which at that time included the entire state correctional system, essentially Chief Counsel of the state correctional system. I was also counsel to the State Parole Board, which was a separate agency. After that, I became a Superior Court Judge in King County, and presided over many felony and misdemeanor trials and hearings, including murder cases (none of which potentially included the death penalty). I was for some years the Chair of the King County Superior Court's Jail Committee, and was on a number of other committees related to the criminal law. After leaving the bench I have for many years followed this area of law, with particular attention to the standards and quality of legal representation our state's system provides to indigent defendants.

I am therefore very hopeful that the Supreme Court will promptly adopt authoritative standards with the intent and ability to markedly increase the quality of such representation.

Having carefully reviewed the proposed standards and the published comments, my comments are:

1. We all must acknowledge that there are as yet no perfect standards, and there won't be perfect standards for a long time, if ever. What we must do, and do now before things get

even worse, is adopt standards that reflect our current best judgment and that carry with them an intent and a straightforward plan that will enable us to have better and better standards over time. To accomplish this essential task - and it is essential - we must have experience with and learn from the practical application of standards that arise from the best efforts and judgments thus far of knowledgeable and experienced people of appropriate intent and balance, and in a reasonable period be ready to modify and improve the standards based on what we have learned during that period. I have personal experience with such an approach in another area - GR 30 (electronic filing) - the original of which we knew wouldn't be perfect (and we so expressed to this Court), but we were ready to learn from experience, and have done so. We have had two modifications since, and have a clearly better and workable GR30 for relevant stakeholders. We'll probably improve it in the future as well.

That experience applies here. I believe we have a group of first standards here that have been carefully thought about and proposed by knowledgeable, experienced and balanced people. I believe we can and will improve them in the future as we are open to and learn from experience.

2. We should and must adopt standards for Indigent Criminal Defense now. The justice system, its participants and those it must serve have waited far too long already. We should adopt the best we have now, and agree to learn and revise and improve over time. That must be the intent of all of us, including this Court.

3. My considered view is that the best we have now (and it's good) is the Washington State Bar Association's most recent version of the standards with suggested revisions as provided to this Court with WSBA Executive Director Paula Littlewood's letter dated October 10, 2011.

In conclusion, I urge the Court to adopt the revised WSBA version at its next meeting, and at the same time require a report on the operation of the new rules and standards within a reasonable period of time to be determined by the court. In such report, the concerns of those others who have made comments should be considered.

I hope this is helpful, and stand ready to clarify or otherwise be of assistance if and as the court may wish.

With best wishes and deep respect,

Donald J Horowitz