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Honorable Ronald Carpenter
Temple of Justice
Post Office Box 40929
Olympia, Washington
98504-0929

April 30, 2014

Re: Proposed Changes to RAP 16.7 and alternative

Dear Clerk Carpenter:

This letter comments on the proposed changes to RAP 16.7, in particular the "alternative" version proposed by the Washington Association of Criminal Defense Attorneys (WACDL).

In general, the proposed changes to the rules for considering personal restraint petitions are sound and will improve the process. Such is not true as to the proposal to abandon the time-tested standard described by this Court in In re Rice, 118 Wn.2d 876, 885-886 (1992). This standard is concrete, well-understood, and fair. There is no presumption of innocence as to an offender who was duly convicted under the laws of this state and whose conviction was affirmed on appeal. Once a conviction is final, a strong showing should be required to disturb the conviction. Because the original conviction was founded on evidence admissible in a trial, a lesser standard should not be allowed when the presumption of innocence has been overcome.

Additionally, WACDL's proposal is problematic. It suggests that this Court should authorize a personal restraint petition based on "reliable" evidence rather than on "admissible" evidence. "Reliability" is not a standard. As the Supreme Court has observed in the context of Confrontation Clause analysis, it is "an amorphous, if not entirely subjective, concept." Crawford v. Washington, 541 U.S. 36, 63, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004). It is "malleable." Crawford, 541 U.S. at 61. There is no reason to expect "reliability" will be a more fixed standard in this context than it proved to be in decades of Confrontation Clause litigation.

For these reasons, I recommend that the WSBA proposal for amending RAP 16.7 be adopted, but that the WACDL proposal be rejected.

Respectfully submitted,

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