

The Honorable Charles Johnson, Chair
Supreme Court Rules Committee
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Via US mail and email: supreme@courts.wa.gov

RE: Public Comments requesting the Supreme Court to Adopt Changes to Superior CrR 3.1(f)

To the Washington Supreme Court:

I am writing to encourage the Washington Supreme Court to adopt the following proposed rule:

CrR 3.1(f)

“Upon finding that the services are necessary, and that the defendant is financially unable to obtain them, the court, or a person or agency to whom the administration of the program may have been delegated by local court rule, shall authorize the services. The motion shall be made ex parte, and, upon a showing of good cause, the moving papers may be ordered sealed by the court, and shall remain sealed until further order of the court. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.”

The current rule states a defense attorney “may” request expert funds *ex parte*. In my experience as a public defender, when requests have been made *ex parte*, it gives the judge the opportunity to request input from the prosecuting attorney. This request can be detrimental to receipt of funds because it allows the prosecutor the opportunity to object and puts the prosecutor on notice that defense counsel is seeking an expert. By changing the language of the court rule to “shall” it eliminates the risk that the prosecuting attorney has any say in defense counsel’s request for expert funds. It also allows defense counsel the ability to disclose the use of an expert to the state on their own terms. I am resubmitting this comment because I think this is still an important issue. I encourage the Court to accept this proposed rule change.

Michelle Hess
Attorney

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#)
Subject: FW: Comment to Proposed Rule Change CrR 3.1
Date: Thursday, April 16, 2020 1:15:13 PM
Attachments: [Comment to Ex Parte Evidence.docx](#)

From: Hess, Michelle L. [mailto:MHESS@spokanecounty.org]
Sent: Thursday, April 16, 2020 1:14 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment to Proposed Rule Change CrR 3.1

Hello,

Attached you will find my comment regarding the proposed rule change to CrR 3.1.

Thank you

Michelle

Michelle L. Hess

Attorney at Law

Spokane County Public Defender's Office

509-477-4869