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Attorney records to stay open

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EPHRATA — A defense attorney's request for a blanket seal on the amount spent on experts in a murder case was denied in Grant County Superior Court.

The motion involves the case of David Nickels, 29, who is charged with murder in the first degree in the December killing of Sage Munro at his Ephrata home.

The court found Nickels was indigent and appointed the Grant County public defenders' department to represent him, but because of a conflict of interest the department couldn't appoint an attorney, according to court records.

This led to a third party hiring of Seattle attorney Jackie Walsh to defend him, but because Nickels is still indigent any experts she hires would be paid for by the county, according to court records.

Walsh argued for the appointment of a separate judge to hear funding requests for experts. The hearings would be conducted between the defense and the judge, excluding the public and the prosecutors.

"Mr. Nickels not only has the right to a fair trial. He also has the right to counsel," Walsh told Grant County Superior Court Judge John Knodell. "Under the umbrella of the right to counsel, he also has the right to effective counsel."

She continued, saying she needed to request funding privately to hire experts, to protect the interests of the defendant.

"Under the equal protection clause, an indigent defendant should be treated exactly the same as a person who has the financial means to support their own cases," she said. "In my experience, what a budget or finance judge provides is the ability to reveal its case to a finance judge ... and it gives the court the ability to properly manage the budget for the case."

If different judges handled the motions, Walsh argues there wouldn't be any oversight on how much money is spent. She added, the separate judge increases the fairness in the case, saying the trial judge won't hear all of the weaknesses in the case before the trial.

"I think there's some serious questions about whether Mr. Nickels should be charged at all," she said. "I've listened to a five-hour interrogation where the defendant never confesses. That's pretty striking."

Walsh has only seen a similar situation once before with a man charged in federal court, and it was dismissed, she said, adding the majority of cases reversed on appeal are because the defense attorney didn't do their job.

"I think there's some serious questions about the reliability of witness testimony," she said. "There is the reliability of the scientific data, which would be the cellphone towers."

Prosecutor Angus Lee argued against appointing a separate budget judge stating the judge should review the requests for funding of experts.

"Although I greatly appreciate the concern Ms. Walsh expresses for the state's case, the reality is Ms. Walsh is doing a couple of things," he said. "She's asking for a continuance of one year and she's asking for a blank check from the people of Grant County."

Lee brought up two Yakima County cases handled similarly to what Walsh was requesting.

Walsh was one of the attorney's appointed to represent Jose Sanchez Jr., who was charged with murdering a man and his 3-year-old daughter, and attempting to murder two other people. In the case, Walsh, along with her co-counsel, charged the county about \$1 million in the case.

"What she didn't tell you was in 2005, she took a murder one case, dragged it out for a year, got a budget judge, where she could submit ex parte requests under seal ... before a superior court judge removed her from the case, she submitted upwards of \$1 million in bills."

Lee called the action inappropriate, saying the Supreme Court has made clear in recent cases files shouldn't be sealed without consideration.

"You should not grant a motion to seal without making sure you're following the proper steps, making sure you're balancing open courts versus the right of the defense to have a fair trial," he said. "The case law is clear: you redact. You redact the documents or the portions of the documents that are necessary to defend the defendant's right to a fair trial."

He argued the information the public has the right to know should be allowed to remain open, saying the court shouldn't allow Walsh to spend money without knowing what it is spent on.

"That's what happened in Yakima," he said. "In fact, Ms. Walsh was referred to the attorney general's office for prosecution out of that."

Walsh said Lee's accusations are untrue, saying they are not part of any facts or legal documents. She added she would be happy to answer any questions about the Yakima County case.

"What occurred in Yakima County is no different than what occurs in many different counties throughout this state," she said. "What was required of defense counsel was no different than what is required from many counties throughout this state."

She said the requirement for funding is to file a declaration for a reasonable explanation for the money, adding the budget judge then decides whether the money should be spent. She defended the judge in the Sanchez case, saying he hasn't been able to respond to the accusations.

"So to say that somehow we got a blank check to rob Yakima County is an insult to the bench," Walsh said. "I'm not asking for a blank check, I'm merely asking for what I'm supposed to ask for and that is funds to properly defend my client."

Knodell decided not to appoint a budget judge and review the requests for funding individually himself.