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April 25, 2008

Justice Charles Johnson
Washington Supreme Court, Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Re: Proposed Changes to CrR 3.1 (d) (4) and JuCr 9.2 (d)

Dear Justice Johnson:

The Superior Court Judges' Association (SCJA) opposes the proposed changes to CrR 3.1 (d) (4) and JuCr 9.2 (d) published for comment by the Supreme Court.

The proposed rule would impose direct responsibility on the judiciary for determining whether counsel meets the Standards for Indigent Defense Services and whether counsel has the "proficiency, ability and commitment" necessary for the specific proceedings. We disagree with the submission stated on the General Rule 9 coversheet that this role is a "judicial function". Please note that our colleagues in the District and Municipal Court Judges' Association also opposed the published rule amendment.

The SCJA feels the court should be able to rely on state and county authorities that have processes in place to hire competent attorneys. Those processes should ensure courts that the attorneys are qualified to take appointments by meeting whatever minimum requirements apply.

The proposed rule change creates the potential for significant conflict between the judicial branch, on the one hand, and the executive and legislative branches, on the other hand. While the judicial branch would be responsible for assessing the qualifications of the defense attorney, the other branches of government would have the actual responsibility for hiring and firing employees or contracting for public defense services. The legislature already requires each city and county to adopt standards for the delivery of public defense services. (RCW 10.101.030.) Requiring the court to make a determination at the beginning of each case as to the "proficiency, ability and commitment" of the attorney hired by or contracted for by the public agency to provide the service would bring the court into direct conflict with the agency each time the court determined the attorney should not be allowed to provide the service he or she is being paid by the public agency to provide. The hiring or contracting public agency is in a much better position than the court to investigate the qualifications of its defense attorneys and monitor adherence to the public defense standards that the legislature requires be adopted by the public agency. The public agency may feel required to challenge each and every ruling by a court

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that an attorney may not proceed on a case, since the court's ruling would be a challenge to how the other two branches of government are performing their statutory obligations.

If adopted, the proposed rule change may also make it difficult for courts to rule on motions alleging ineffective assistance of counsel, since the court will have already approved the "proficiency, ability and commitment" of the attorney at the beginning of the case.

Thank you for your consideration of the SCJA's comments on this proposed rule change.

Very truly yours,

Vickie I. Churchill
President-Judge
Superior Court Judges' Association

cc: SCJA Board of Trustees
Judge Salvatore Cozza
Camillia Falk
Regina McDougall