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March 23, 2010

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

Dear Justice Johnson:

RE: Proposed Rule – CrRLJ 3.1(d) – Right to and Assignment of a  
Lawyer

The District and Municipal Court Judges' Association (DMCJA) has reviewed proposed rule CrRLJ 3.1(d)(4). We oppose adoption of the proposed rule change. However, we are in support of the proposed rule with modification.

On behalf of the DMCJA, I submit the following comments for your consideration.

The addition of new proposed section (d) (4) would place an undue burden on the trial judge to "police" the defense bar's compliance with the Standards for Indigent Defense Services. The executive branch hires public defenders, not the judicial branch. Pursuant to RCW 10.101.030, "Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office." Moreover, the Washington State Office of Public Defense (OPD) is the body that should be enforcing and overseeing adherence to Standards as their mission is "to implement the constitutional guarantee of counsel...." The OPD should work with the counties and cities to educate them about the standards and insist that they include such provisions in their public defender contracts. Trial courts should not be involved in this process.

While proponents of this proposed rule may believe that requiring judges to insure an attorney's compliance with applicable standards for indigent services will improve the quality of public defense services in various jurisdictions, the judicial branch has no authority or responsibility to monitor an attorney's certification with these standards. For example, most of the standards, including caseload, training, supervision, and

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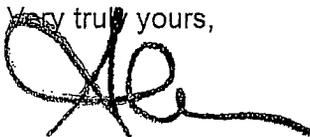
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qualifications of counsel, are not within the court's purview. Regarding indigent defense services, the court has a responsibility to address issues of ineffective assistance of counsel, as those issues may arise in a case. When required to do so, the court must be, as well as appear to the general public to be, neutral and unbiased to any issue of ineffective assistance of counsel. By requiring the court to be involved in the certification of counsel at an earlier point in the trial may raise issues regarding a judge's hearing and/or ruling on ineffective assistance of counsel as to their neutrality, potential bias, and may even be cause for recusal if the judge becomes a witness.

The proposed rule, as drafted, would be a departure from the traditional role of trial court judges and blur the lines on the proper separation between judicial and executive branch powers and duties. The rule, as modified by the DMCJA, would meet the purpose of the proposal by addressing the issue of attorney compliance and certification of standards for indigent defense services and require the attorney to assert their certification. However, the language the DMCJA proposes would not require the court to take an affirmative step regarding an attorney's compliance with those standards. Ultimately, the proposed rule with the DMCJA's modification would not infringe upon proper separation of the judicial and executive branches of government.

Enclosed are the suggested modifications to the proposed rule. If the Supreme Court would like any additional information, please do not hesitate to contact me. Thank you for your consideration of this matter.

Very truly yours,



Glenn M. Phillips  
President – Judge

Enclosure

cc: Judge Janet Garrow, Chair, DMCJA Court Rules Committee  
Mr. Chris Ruhl, AOC  
Ms. Nan Sullins, AOC

Rule Change to CrRLJ3.1(d) as modified by the DMCJA

CrRLJ 3.1(a)-(c) and (e)-(f) [unchanged]

(d) Assignment of Lawyer.

(1) Unless waived, a lawyer shall be provided to any person who is financially unable to obtain one without causing substantial hardship to the person or to the persons family. A lawyer shall not be denied to any person merely because his or her friends or relatives have resources adequate to retain a lawyer or because he or she has posted or is capable of posting bond.

(2) The ability to pay part of the cost of a lawyer shall not preclude assignment. The assignment of a lawyer may be conditioned upon part payment pursuant to an established method of collection.

(3) Information given by a person to assist in the determination of whether he or she is financially able to obtain a lawyer shall be under oath and shall not be available for use to the prosecution in the pending case in chief.

(4) Before accepting appointment for representing an individual, a lawyer must certify ~~Before appointing a lawyer for an indigent person, the court shall require the lawyer to certify~~ he or she complies with the applicable Standards for Indigent Defense Services approved by the Supreme Court.