Faulk, Camilla

From: Christopher Taylor [taylor@ftlawps.com]
Sent: Tuesday, September 27, 2011 11:45 AM
To: Faulk, Camilla
Subject: Suggested Standards for Indigent Defense.

M. Faulk,

I would like to comment on the proposed Suggested Standards for Indigent Defense, open for comment until October 31, 2011, and set to be implemented, along with the amended CrR 3.1, on January 1, 2011.

Generally, I like that the Standards aspirationally recognize excessive caseloads prevent effective representation. I also like the fact of the specifics regarding minimum experience under Standard 14. As with some of the other commenters, I'm concerned about Standard 5.2's requirement of an office; I know a number of good criminal defense attorneys who struggle to make ends meet as it is, and provide great representation using nothing more than a PO Box, a mobile telephone, a laptop, and private meeting rooms at the courthouse and in the jail.

I'm also concerned Standard 3.4 does not provide a clear number regarding the misdemeanor caseload limit. I'm also concerned with some proposed ways to handle this that have been floating around, with ways of counting cases as fraction of cases. For the same reasons clear guidelines are necessary in the adult felony, juvenile offender, dependency, civil commitment, death penalty, and appellate realms, clear guidelines need to be established for misdemeanors. And the sorts of complicated counting schemes I've seen do not represent clear guidelines.

Most concerning to me, however, is the way in which this rule places pressure on individual defense attorneys, but places no pressure on the courts, prosecutor's offices, or the cities and counties that ultimately foot the bill for trial work.

Consider an attorney who has a juvenile offender contract that pays $2200 per month, and represents approximately 250 cases per year. Let's say that attorney historically also took six adult felony appointments per month, billed at $50 per hour, with a $700 cap before trial, and a $1200 cap after trial, with an average billing of $600 per case. And let's say that attorney got by without having an office, and instead took his mail at a PO Box, and had a mobile telephone for client contact, knowing he could meet with clients at the private rooms at the courthouse. Before expenses, that's $5200 per month. After expenses-e.g. malpractice insurance, bar dues, CLEs, the PO Box, the mobile phone-this attorney's taking home a gross pay of maybe $4000 per month. Not the big bucks, but a living wage.

But after the caseload standards come into effect, he's going to have to shell out money for an office. And he's going to have to give up either the adult felony appointments, or give up (part of) the juvenile offender contract. So his costs go up, and his revenue goes down. Let's say he halves the juvenile contract and keeps the adult felonies (both representing about half-time, which is in line with the caseload limits). Before expenses, he's making $4100. And after expenses (assuming he can find an office sharing arrangement for $500 per month), he's now making $2400. Now he's now making less than some of his indigent clients. [And that's assuming the County is willing to halve the juvenile offender contract. They might, instead, keep it as a single, full-time contract for $2200. Although I suspect they'd have difficulties finding any takers, or at least takers who are going to comply with these Standards.]

And this attorney cannot force the judges or the counties to allocate additional funds for indigent defense, because the rule doesn't actually require them to do anything.

So what's this attorney to do? He's going to have to consider leaving the criminal arena all-together, and pursue a more sustainable sort of practice. The best and the brightest criminal defense attorneys may be able to find work or build a practice elsewhere. The more tarnished, less capable among us who have nowhere else to go will stick it out and provide, on average, inferior representation to what was provided before.

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Regards,

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