Faulk, Camilla

From: Kam Cayce [kam@caycegrove.com]
Sent: Monday, October 31, 2011 3:36 PM
To: Faulk, Camilla
Subject: Public defense standards--comment

Honorable Justices: I write this to express my complete agreement with the comments of my partner Tricia Grove which I have attached below. I have had the Public Defense Contract in the City of Renton for 35 years and take great pride in the professionalism and the quality of representation that we offer. We are not a training ground for young lawyers to move on to felony work. We are dedicated to the highest level of representation for our clients and work to ensure that our misdemeanor clients receive the best representation and results possible. We are painfully aware that the impact in terms of jail time, fines and other collateral consequences frequently exceed the impact of many cases that are processed as felonies. Experience truly makes a difference. We request that you reject the application of these standards to misdemeanor caseloads. Thank you.

Kam Cayce WSBA # 6579
CAYCE & GROVE

Tricia Grove wrote:
I am concerned that these case load limits set forth in the proposed standards fail to take into consideration the experience of counsel and differences in the practice of counsel in different courts. This failure to take into account experience of counsel will dramatically impact the quality of the representation provided to the indigent. The standards assume that all courts operate like the King County District Court where courts of limited jurisdiction are, for the most part, used by both the prosecutor's office and the public defender's office as the baseball equivalent of the minor leagues. A new attorney comes in and gets a year or two of experience and then moves on to the Superior Court. This is not the case in private, for profit Public Defenders.

I personally have over 16 years of experience as the Public Defender for the City of Renton. Public Defense is my chosen career and I take pride in how I practice. When I first began my practice, I trained under an attorney who had over 15 years of experience in the Renton Court and as the Renton public defender. We have a significant advantage over other attorneys in our Court. Under this proposed rule, the only requirement to practice misdemeanor defense is that the attorney has satisfied "the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court, " and is familiar with the legal issues associated with the practice of criminal defense. At the municipal court level in many of our jurisdictions we have attorneys with upwards of ten and twenty years of experience who have dedicated their careers to representing indigent defendants accused of misdemeanors. Under the rules, these attorneys would be limited to the same case load as an attorney right out of law school, with no recognition for the value of their experience.

In every other level of case, from Class C felonies to Death Penalty Cases, the proposed standards take experience into account. Misdemeanors are important, and my clients are too. Misdemeanors impact a client's life in a variety of ways including liberty, livelihood, immigration status, driving privileges, gun rights, educational benefits and result in travel restrictions. For the same reason experience matters in a Class A felony, it should matter and be taken into consideration for a misdemeanor defendant. Experienced lawyers can and do get better results than inexperienced ones. We are capable of representing a significantly higher number of cases than a brand new attorney.

The standards also assume that every city operates under a model where a defendant is assigned to a particular public defender that stays on the case throughout its duration. However, in some jurisdictions, it is to the client's benefit to be represented by the firm as a whole, rather than a specific individual who may not be the best person in the firm to handle the case as it unfolds. For instance, in every office there are going to be some attorneys who are going to be more effective when it comes to taking a case to trial. This credible threat of an experienced trial attorney taking a case to trial gives the accused the best chance at a good plea bargain if they are interested in resolving their case short of trial, and an experienced trial attorney if they elect to go to trial. The proposed standard does not appear to provide a mechanism for cases to be shifted to more qualified attorneys when the situation requires. This is a one size fits all approach that simply does not work.

Significantly, the proposed standards amount to little more than unenforceable and unfunded recommendation to our municipalities. For instance, Standard One provides a guideline on compensating the public defenders to that comparable with the city's contract on prosecutors. But under this proposed rule there will be, at a minimum, over twice as many public defenders as compared to prosecutors. The proposed standards do not take into account the very real possibility that in these tough economic times the cities and small counties do not have the resources to pay their public defenders what they **should and would in no way be able to pay more public defenders** as these proposed standards would mandate. Therefore, the likely result of this rule will not be adding more attorneys to handle the same number of cases; this rule will lead to a shift in the filing standards. Municipalities will enact local rules eliminating jail time for some offenses, thus undermining the legislature and our rule of law. Most concerning, however, is that municipalities will do away with less complicated crimes, resulting in attorneys having the same case loads but with more complex cases and less time to focus on each individual.

In addition, given that the most that the standard provides for is what the cities and small cities **should** pay their public defenders, they may simply elect to replace their current experienced attorneys with less expensive, less qualified attorneys just out of law school.

The proponents of the caseload limits would have the court believe that the system is broken. Just like in private practice, there are public defenders who have provided ineffective and poor representation. However, the majority of misdemeanor public defense attorneys provide excellent representation because they take pride in their chosen career. It was a private, for profit public defender who developed the argument in *Redmond v. Moore* resulting in defenses for thousands of persons charged with driving with license suspended charges. It was a private, for profit public defense firm who developed the argument that the previous version of the No Contact Order Violation statute did not cover consensual non-threatening violations that occurred outside the residence, workplace or school, resulting in a large number of cases being dismissed or not filed until the legislature changed the statute. It was a private for profit public defender who came up with the argument that a defendant charged with Violation of the Ignition Interlock statute could defeat the charges if they had never had a new license issued after the requirement was put into place, again resulting in legislation re-writing the statute.

Experienced, well qualified private public defense firms have been busy successfully defending their indigent clients, arguing motions, negotiating good plea dispositions and more often than not winning jury trials. The proposed rule jeopardizes the great work that many of us have done by reducing all of us to the lowest common denominator. Let my clients have a voice. I am a private, for profit public defender, who loves her job, enjoys her clients, and has no history of bar complaints in over 16 years.

Tricia R. Grove
Attorney at Law

CAYCE & GROVE, PLLC
P.O. Box 798
Renton WA 98057

Kam Cayce
kam@caycegrove.com
www.caycegrove.com
T: 425.255.0603

cayce | grove
LAW OFFICES
www.caycegrove.com