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October 31, 2011

The Honorable Charles W. Johnson
Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Re: Comment on Proposed Standards to Implement CrR 3.1, CrRLJ 3.1, and JuCR 9.2

Dear Justice Johnson:

The Washington State Office of Public Defense (OPD) appreciates the opportunity to comment on the standards that have been proposed to implement Court Rules CrR 3.1, CrRLJ 3.1 and JuCR 9.2, which require attorneys to certify that they meet certain standards when appointed as counsel for indigent defendants.

The OPD Advisory Committee, by consensus action, has endorsed the proposed standards that have been published for comment as appropriate and necessary to ensure meaningful implementation of the Court Rules. The Advisory Committee membership includes attorneys, non-attorneys, former judges, and representatives of city and county governments.

OPD holds a position on the Washington State Bar Association's Council on Public Defense (CPD), and in that capacity participated in the extensive process devoted to developing the proposed standards. The year-long process included unprecedented outreach to stakeholders, including judges, attorneys and local governments. The WSBA's Board of Governors (BOG), who are elected to represent the legal profession from all corners of the state, heard presentations from both proponents and opponents of the proposed Standards and carefully evaluated the issues over several months.

Although some stakeholders, during the process above, continuously expressed steadfast opposition to any measurable and enforceable standards, others offered thoughtful observations and concerns that guided the Council and the BOG in their recommendations to the Court. For example, in response to reasonable concerns about needing time to prepare for numeric caseload standards, the Council and the BOG recommended a 2013 implementation for numeric caseload standards, instead of the 2012 effective date proposed for other standards. In response to judges' requests, the CPD and BOG amended the "definition of a case," to better reflect practices in the courts of limited jurisdiction.



The standards for these rules that have been proposed by the CPD are basic. They encompass minimal experience and resources requirements including, for the proposed 2012 implementation date, general caseload limits within the discretion of the attorneys, a requirement for a some sort of office outside the courthouse for confidential meetings with clients, and that the attorney use investigators in accordance with existing court rules.

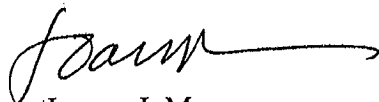
Some comments to the Court regarding the proposed standards have expressed concerns about the adequacy of home offices under Standard 5.2, which states, in part, that an attorney "shall have an office that accommodates confidential meetings with clients ..." This proposed standard was included to address a widespread practice of public defense attorneys who either do not have offices or do not want their clients to come to their offices. In many areas, public defense attorneys consistently hold attorney-client meetings in courthouse hallways, courthouse interview rooms which often have glass windowed-doors and are available only for short periods of time due to high demand, or non-confidential public spaces. It is difficult, if not impossible, to fulfill RPC 1.4's requirement that a public defense attorney conduct reasonable attorney-client consultation, impart updated information about the status of the case, and take the time to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" when the attorney has no suitable interview space. As part of ensuring that such communication occurs, OPD trial-level contracts (for parents' representation attorneys) require that they maintain an office with a confidential interview space.

For public defense attorneys who work out of their homes, this proposed Standard can be fulfilled by having a minimal rental arrangement with offices that will provide conference space to accommodate meetings with clients and receipt of mail. In OPD's experience, such offices exist statewide.

Lastly, like the WSBA, OPD suggests that the Court may wish to extend the comment period for suggested Standard 3.4, numerical caseload limits, as it has only recently been forwarded to the Court.

On behalf of OPD and the OPD Advisory Committee I urge the Court to adopt the Standards proposed for implementation of CrR 3.1, CrRLJ 3.1, and JuCR 9.2 with a recommended implementation date of January 1, 2012.

Sincerely,



Joanne I. Moore
Director