

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

*Via US mail and email: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)*

RE: Public Comments requesting the Supreme Court to Adopt Changes to Superior CrR 3.1(f)

To the Washington Supreme Court:

I am writing to encourage the Washington Supreme Court to adopt the following proposed rule:

CrR 3.1(f)

“Upon finding that the services are necessary, and that the defendant is financially unable to obtain them, the court, or a person or agency to whom the administration of the program may have been delegated by local court rule, shall authorize the services. The motion shall be made ex parte, and, upon a showing of good cause, the moving papers may be ordered sealed by the court, and shall remain sealed until further order of the court. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.”

The current rule states a defense attorney “may” request expert funds *ex parte*. In my experience as a public defender, when requests have been made *ex parte*, it gives the judge the opportunity to request input from the prosecuting attorney. This request can be detrimental to receipt of funds because it allows the prosecutor the opportunity to object and puts the prosecutor on notice that defense counsel is seeking an expert. By changing the language of the court rule to “shall” it eliminates the risk that the prosecuting attorney has any say in defense counsel’s request for expert funds. It also allows defense counsel the ability to disclose the use of an expert to the state on their own terms. I encourage the Court to accept this proposed rule change.

Michelle Hess  
Attorney

**Tracy, Mary**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, April 29, 2019 1:14 PM  
**To:** Tracy, Mary  
**Subject:** FW: Comment on Proposed Rule  
**Attachments:** Comment to Ex Parte Evidence.docx

**From:** Hess, Michelle L. [mailto:MHESS@spokanecounty.org]  
**Sent:** Monday, April 29, 2019 1:10 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment on Proposed Rule

Hello,

Attached you will find my comment on the proposed rule change.

Thank you.

Michelle

*Michelle L. Hess*

*Attorney at Law*

*Spokane County Public Defender's Office*

*509-477-4869*