



March 1, 2019

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

Re: Comment on Suggested Changes to Superior Court Criminal Rule 3.1(f), Criminal Rule for Courts of Limited Jurisdiction 3.1(f), Juvenile Court Rule 9.3(a) and General Rule 15(c)

Dear Justice Johnson:

WDA is taking the unusual step of submitting a comment on our own proposed rule changes. We do so to address decisions of the Court on sealing and open courts that we inadvertently overlooked when originally proposing the rule changes. Taking those decisions into account, we now ask for more limited changes to CrR 3.1(f), CrRLJ 3.1(f) and JuCR 9.3(a) and withdraw our proposal that the court amend GR 15(c).

We believe that amending the court rules as we now suggest recognizes the importance of open courts while also allowing defense attorneys to pursue necessary experts without sharing their developing trial strategies with opposing counsel.

We are available to answer any questions. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Magda Baker', with a long, sweeping horizontal line extending to the right.

Magda Baker, Misdemeanor Resource Attorney



WASHINGTON  
DEFENDER  
ASSOCIATION

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Re: Comment on Suggested Changes to Superior Court Criminal Rule 3.1(f), Criminal Rule for Courts of Limited Jurisdiction 3.1(f), Juvenile Court Rule 9.3(a) and General Rule 15(c)

Dear Justice Johnson:

We are submitting this comment because when we originally suggested changes to court rules that govern requests for expert funds we inadvertently overlooked some of the Court's decisions regarding the interaction between requests to seal court records and the mandate in article I, section 10 of the Washington Constitution that justice shall be administered openly. We now propose small changes to our initial suggestions that will both preserve Washington's system of open courts and protect indigent people accused of crimes who request funds for experts. We ask for changes to CrRLJ 3.1(f), CrR 3.1(f) and JuCR 9.3(a). We also ask that the Court disregard our original request to alter GR 15(c).

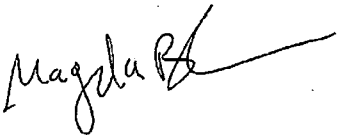
In regards to CrR 3.1(f)(2) and the identically worded CrRLJ 3.1(f)(2), we now suggest that the Court change only one word in each rule so that the second sentence would read as follows: "The motion ~~may~~ shall be made *ex parte*, and, upon a showing of good cause, the moving papers may be ordered sealed by the court, and shall remain sealed until further order of the court." Changing a single word would tell judges and both parties in criminal cases that it is not appropriate for prosecutors to weigh in on defense requests for expert funds while still allowing the trial court to consider the *Ishikawa* factors before deciding whether to seal such requests.

Regarding JuCR 9.3(a) we now suggest a new second sentence that would read as follows: "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." This change would allow juveniles accused of crimes the same right to make *ex parte* motions for expert funds as adults charged with crimes have while still allowing for individual consideration of requests to seal such motions.

Finally, we ask that the Court disregard the original suggestion to change the wording of GR 15(c).

Attached to this comment are the court rules with the changes we now ask the Court to make underlined. WDA hopes that the Court will consider this comment in addition to our original proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Magda Baker", with a long horizontal flourish extending to the right.

Magda Baker, Misdemeanor Resource Attorney

### **CrR 3.1 RIGHT TO AND ASSIGNMENT OF LAWYER**

...

#### **(f) Services Other Than Lawyer.**

...

(2) 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 ~~may~~ 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.

...

### **CrRLJ 3.1 RIGHT TO AND ASSIGNMENT OF LAWYER**

...

#### **(f) Services Other Than Lawyer.**

...

(2) 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 ~~may~~ 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.

...

### **JuCR 9.3 RIGHT TO APPOINTMENT OF EXPERTS IN JUVENILE OFFENSE PROCEEDINGS AND ASSIGNMENT OF LAWYER**

**(a) Appointment.** A juvenile who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense may request that these services be provided at public expense by a motion. 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. Upon finding that the services are necessary and that the juvenile is financially unable to obtain them without substantial hardship to himself or herself or the juvenile's family, the court shall authorize counsel to obtain the services on the behalf of the juvenile. The ability to pay part of the cost of the services shall not preclude the provision of those services by the court. A juvenile shall not be deprived of necessary services because a parent, guardian, or custodian refuses to pay for those services. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, may ratify services after they have been obtained.

...

## **GR 15 DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS**

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### **(c) Sealing or Redacting Court Records.**

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

...

## Tracy, Mary

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, March 1, 2019 1:33 PM  
**To:** Tracy, Mary  
**Subject:** FW: WDA comment on proposed rule changes- expert funding requests  
**Attachments:** March 1 2019- WDA comment on proposed rule changes - expert funding requests.pdf;  
March 1 2019- WDA cover letter for comment - court rules and expert funding requests.pdf

Do you get these??

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**From:** Magda Baker [mailto:Magda@defensenet.org]  
**Sent:** Friday, March 1, 2019 1:24 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Hinchcliffe, Shannon <Shannon.Hinchcliffe@courts.wa.gov>  
**Subject:** WDA comment on proposed rule changes- expert funding requests

Hello,

Please see attached cover letter and comment concerning proposed changes to the following court rules: CrR 3.1, CrRLJ 3.1, JuCR 9.3 and GR 15. We are available to answer any questions. Thank you for your time and attention.

**Magda Baker**  
Misdemeanor Resource Attorney  
She/her/hers  
**Washington Defender Association**  
110 Prefontaine Pl S | Ste 610  
Seattle, WA 98104  
Tel: 206.623.4321, extension 106 | Fax: 206.623.5420  
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