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Subject: FW: Comment to June 2021 Proposed Amendment to CrR 3.1
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From: Andrew Van Winkle [mailto:avanwinkle8@gmail.com]
Sent: Thursday, September 23, 2021 6:20 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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I am writing to comment on the proposed amendment to CrR 3.1, published for comment in June 2021.

[Comment regarding proposed amendment to CrR 3.1](#)

There is no federal constitutional right to counsel in post-conviction proceedings, neither as a matter of due process, nor under the Sixth Amendment. *Pennsylvania v. Finley*, 481 U.S. 551, 555-57 (1987); *State v. Forest*, 125 Wn. App. 702, 707, 105 P.3d 1045 (2005) (recognizing *Finley's* application to CrR 7.8 motions); see also *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390 (1999) (citing *Coleman v. Thompson*, 501 U.S. 722, 752 (1991)).

Because the federal constitution does not apply, any right to counsel at the CrR 7.8 stage is subject to the rights and limitations outlined in Washington's constitution. Washington's constitution prohibits gifts of public funds to individuals, except "for the necessary support of the poor and infirm." Art. VIII, sec. 7; Art. VIII, sec. 5. By dispensing with indigency requirements and indigency screening requirements, courts cannot fulfill their constitutional duty to determine whether individuals seeking counsel are either poor or infirm and whether the appointment is necessary to support such individuals. Thus, the proposed amendment to CrR 3.1(b)(2) appears to run afoul of Washington's constitution.

Thank you for your time,

Andrew B. Van Winkle, WSBA #45219