WAP | WASHINGTON
APPELLATE PROJECT

September 28, 2021

Justice Charles Johnson
Justice Mary Yu
Co-Chairs, Supreme Court Rules Committee
Washington Supreme Court
415 12th Ave SW
Olympia, WA 98501-2314

Re: Suggested amendments to CrR 3.1 and CrR 7.8

Dear Justice Johnson and Justice Yu:

The Washington State Office of Public Defense (OPD), Washington Defender Association (WDA), and Washington Association of Criminal Defense Lawyers (WACDL) are submitting suggested amendments to CrR 3.1 and CrR 7.8, and requesting expedited adoption in the interest of justice.

I write in support of the proposed amendments. For 25 years I was in private practice – mostly representing defendants seeking post-conviction relief in the state and federal courts. I began my career as a King County public defender. Recently I have closed my practice and returned to my roots here at Washington Appellate Project. I say this only to point out that I have a very long view of criminal defense and post-conviction procedures in Washington.

It is difficult, if not impossible for most pro se petitioners to receive any post-conviction relief in Washington the procedural and substantive barriers are so high as to be virtually insurmountable.
But the decision in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021) unequivocally provides those affected with the right to relief.

Nonetheless, some superior courts are requiring defendants who are clearly entitled to relief to research, draft, and properly file pro se motions in which they must successfully articulate a basis for relief prior to qualifying for counsel. This is particularly troubling in light of the fact that relief for these defendants is a foregone conclusion. And these defendants may still be incarcerated with limited access to the law library, not fluent in English or illiterate. The suggested amendments to CrR 3.1 and CrR 7.8 would acknowledge the profound injustice already suffered by persons convicted under unconstitutional and invalid statutes and would ensure their equal treatment in courts statewide.

Many times the excuse for the failure to appoint counsel to pro se petitioners rests on the misguided notion that appointing counsel costs more that requiring defendants to proceed pro se. But my considerable experience suggests just the opposite. Many times pro se defendants actually require more time and attention by the clerks, judges and prosecutors. These costs are rarely recognized because they are not as transparent as appointing counsel. Defense lawyers know how to negotiate settlements, file documents properly and marshal the proper arguments. As result, issues are expeditiously settled at a far lower cost to the system as a whole.

Stated another way, those opposing this rule for reasons related to funding are simply wrong. By advocating for obviously unwarranted procedural barriers, the opponents fail to recognize that they are advocating for the waste of public resources and unnecessarily burdening the clerks and court staff who will have to deal with problems caused by pro se petitioners unfamiliar with the legal process.

Sincerely,

Suzanne Lee Elliott
Attorney at Law

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Please see the attached.

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