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**From:** Marla Zink [mailto:marla@luminatalaw.com]  
**Sent:** Thursday, September 30, 2021 1:35 PM  
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**Subject:** Comment to Proposed Criminal Rules 3.1 and 7.8

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Dear Justices,

As a criminal defense attorney who handles both appointed and private cases throughout the state, I regularly receive inquiries from individuals who are entitled to relief under *State v. Blake* and/or who are otherwise serving a sentence for a conviction based on a statute determined to be void, invalid, or unconstitutional or that includes a prior conviction based on a statute determined to be void, invalid, or unconstitutional. In my experience, different counties throughout the state handle these claims differently. In some counties there is no public defense structure or mechanism for incarcerated or previously convicted persons to reach a public defender. Pro se postconviction filings mailed directly to the superior court are often narrowly construed or quickly denied and requests for counsel are often denied. Recently, I volunteered to assist an incarcerated individual who is entitled to resentencing under RCW 9.94A.647 (sentenced as a persistent offender on the basis of robbery in the second degree) and under *Blake*. That individual believed he had filed a pro se request for resentencing but had heard nothing back from the prosecuting attorney and the court seemed to understand the request to be under a different, discretionary statute. When I called the prosecuting attorney to advocate for this individual, the prosecutor told me counsel would only be appointed for this required resentencing if the individual explicitly requested it, which the individual assured me he had. In short, the current system is inequitable, uneven, and difficult to navigate. The proposed rules would improve the process and create efficiencies. In considering the proposed rule changes, we should also keep in mind that the laws that have been determined to be void, invalid, or unconstitutional have been disproportionately imposed on Black, Indigenous, and other persons of color (*see, e.g.*, Race Task Force 2.0, Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court; 2021 Gender Justice Study: How Gender and Race Affect Justice Now). We ought not keep adding to the burdens placed on these individuals and their communities. Providing for the seamless appointment of counsel in these limited circumstances would alleviate one of the many stresses that continue to impact incarcerated and formerly incarcerated persons in our state.

Thank you,

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