

October 30, 2024

The Honorable Chief Justice Steven González
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

RE: Comment on the Proposed Amendments to the Court's Standards for Indigent Defense
Relating to Social Workers

Dear Chief Justice González and Members of the Court:

Social workers can be an important part of a public defender "team". However, I recommend the proposed Standard 4 requirement that a public defender "shall" work with a social worker should be stayed until further work can be done to determine:

1-whether social workers who are part of a defense "team" do or do not have the duty to report abuse of vulnerable adults or abuse of a child, as required of social workers by RCW 74.34.035 and RCW 26.44.030 respectively; and

2-whether licensed social workers who are part of a defense "team" must comply with a subpoena from the Department of Health for the social worker's records/note .

The proposed Standards require a public defender "shall" work with a social worker. Standard 4. "...a mitigation specialist or social worker...shall" be included in the staff supporting a public defender. A social worker, for purposes of the Standards, is:

A public defense professional with a master's degree in social work who provides professional services to assist the attorney and to help meet the basic and complex needs of the client. Often, this can involve enrolling in health care or other government support services." Standards, Definitions.

The Washington State Office of Public Defense (OPD) has taken the position that licensed social workers working with attorneys representing parents in dependency proceedings are mandatory reporters and that attorneys should so advise their clients.

“ We also understand that, pursuant to statute, licensed social workers are mandatory reporters. We believe this information has (sic) be shared with clients at the beginning of the representation because contact with social worker (sic) result in the exposure of what would be considered confidential information under RPC 1.6.” February 8, 2024, Letter from Larry Jefferson, OPD Director to Molly Gilbert, DPD/SEIU 925 Union President.

Director Jefferson has asked the Washington State Attorney General for an opinion on whether social workers are "mandatory reporters". November 15, 2023, email from Larry Jefferson so advising Anita Khandelwal, then Director of the King County Department of Public Defense. I

am not aware that the Attorney General has issued an opinion in response to Mr. Jefferson's request.

Within the past two years a complaint has been filed against a social worker working with a public defender that led the Washington Department of Health to request a social worker's records relating to work the social worker had done with a public defender. The request was later withdrawn and no records, to my knowledge, were provided.

RPC 1.6 and RCW 5.50.060 protect those working as part of an attorney's "team" from being questioned about communications to and from a client. The two do not, however, specifically address a statutorily imposed duty imposed upon a social worker to report or to respond to certain requests for communication with clients.

RCW 5.50.060 includes a privilege for independent clinical social workers providing that they "may not disclose or be compelled to testify about any information acquired from the persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services..." RCW 5.60.060(9)

However, social workers part of a defense "team" are not independent or, in many cases, licensed. Further, RCW 5.60.060 removes protection for information obtained by an independent licensed social worker when it is sought by the Department of Health as part of an investigation.

A person licensed under this chapter shall not disclose ...any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:...

(3) In response to a subpoena from the secretary. The secretary may subpoena only records related to a complaint or report under RCW [18.130.050](#).

Failure to cooperate in an investigation is defined as unprofessional conduct, which may jeopardize the social worker's license. RCW 18.30.180.

Until the Attorney General issues an opinion about a social worker's obligations I recommend this requirement be stayed until the Attorney General issues an opinion about these potentially competing obligations.

Eileen Farley