

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelyn](#)
Subject: FW: Proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2 and my comments on them.
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From: George Steele <GSteele@masoncountywa.gov>
Sent: Monday, June 17, 2024 1:11 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2 and my comments on them.

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I wish to offer commentary on the proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2.

I previously referred to the proposed amendments on CrRLJ 8.3 as insane. I now wonder if I wasted that word on that proposed amendment to CrRLJ 8.3, when the proposed changes to public defender case counts will, by comparison, make the proposed CrRLJ 8.3 look like a well-reasoned and moderate endeavor.

The proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2 are beyond insane. I want to be clear that I have long recognized and advocated for the value that public defenders provide in the operation of the criminal justice system. I have made my views known that sufficient compensation is owed. We are supposed to be a nation of law. We are supposed to comply with that law and that includes protecting the accused's rights, including the right to be represented. Having a robust public defense system is critical to insuring that defendants' rights are protected and the system remains honest.

I also agree with the current case count system or something close to it. We do not want to be in a situation where cities or counties refuse to supply sufficient public defense resources, creating a "greet and plea" system.

The problem that I have is that if the Supreme Court adopts the proposed changes to CrR 3.1, CrRLJ 3.1, and JuCR 9.2, created by the WSBA, the affect will all but collapse the criminal justice system.

The primary problem with this proposed rule is that it goes far beyond restricting caseloads so that attorneys can provide the quality of services that indigent defendants have a right to expect. When these standards are fully implemented, public defenders are only going to be able to have eighty misdemeanor cases a year, as the vast majority of the misdemeanor cases are going to use up 1.5 case credits. Felonies will be even more drastic. What the WSBA and quite possibly the Supreme Court is doing is solving the problem of the supply of public defenders by drastically increasing the demand.

In my county, I have been told that these changes will require three times the attorneys needed than we currently have in public defense. I want to be clear; our public defenders provide quality services to indigent defendants. Mason County does not have anything close

to a “greet and plea” public defense system.

The standards the proposed rule seeks to impose will go beyond anything that any counties will be able to provide. Even if they were able to pay for it all, the created demand for public defenders will exceed the supply of attorneys willing to work in public defense. As a result, this rule will restrict the supply which will translate in counties having to drastically limit cases that can be charged and prosecuted which probably does not surprise the new rule’s proponents.

This rule mandates services such as mitigation specialists, which counties will have to find some way to fund. This rule will require more services that do not have much to do with defending someone in court, which is the basis of the Constitutional right to counsel.

If this rule is adopted, expect the following:

There will be severe limitations on the number of criminal cases that can be filed as there will be no attorneys available to represent these defendants. The head of our public defense office believes the reduction will be in the seventy to seventy-five percent range for both Superior Courts and courts of limited jurisdiction. I slightly disagree with him as what will happen when these standards are adopted. You can expect that prosecutors will eliminate filings on everything except the most serious of felonies. They will have no choice. That means that DUI’s, misdemeanor assaults, misdemeanor everything, Assault Thirds, not to mention other felonies that are less serious, will not be filed. I would not be surprised if many lower level felony sex cases likewise will not be filed. If there are no attorneys available to take these cases, they cannot be pursued, hence they really cannot be filed. It gets worse.

These rules also require standards for public defenders to achieve. They have to attain certain benchmarks of experience to handle cases that are more serious. I have no problems with such requirements; as funny as “My Cousin Vinny” was to watch, having a person’s first criminal case be a death penalty murder case, as depicted in the film, is beyond ludicrous. However, assuming prosecutors only charge the most serious cases, how would any thinking person believe that newer attorneys would ever have the opportunity to handle less serious cases and build experience, when those cases will not be charged in the first place? The answer is they will not have those opportunities which will shrink the supply of qualified attorneys even more.

These rules will be a punch in the gut to everyone; however, they will strike medium and smaller jurisdictions even more. This rule artificially inflates demand for public defenders beyond the supply of attorneys available, even if unlimited money existed to pay for all of what will be required.

This rule will drastically reduce the use of legal interns to take cases. We have a working system under Rule 9. I started off my career as a legal intern. I learned a lot and handled full case loads as a prosecutor; many of my law school classmates did the same in the public defender’s office. All of us were supervised as needed. As I said, we handled full case loads. Using legal interns will become less of an option for public defender offices under these case credit standards even as we guarantee that there will not be enough public defenders. The result will be even less capacity for cases to be heard in the court system.

This rule will probably result in a shortage of prosecutors as well. I believe the current case count standards create a rough parity of work levels, as opposed to cases, between prosecutors and public defenders. On average, more time is spent on preparation per case by the defense, at least in my opinion and my experience. These new case credit standards will drastically invert that situation making it much more difficult for prosecuting attorney offices to attract deputy prosecutors, when they can earn the same income for far less work.

In short, these new standards are going to wreck the criminal justice system if they are adopted. This is a result that I have to believe comes as no surprise to those who are proponents of the rule changes. For many of them, it may very well be the point.

I strongly urge you not to adopt these insane proposed rules. If you are going to amend the rule, please do not go beyond the first year changes and do not make decisions on implementing the rest of the changes until one sees how this is working out. At least in that case, it will be possible to re-think this insanity before the criminal justice system in this state is wrecked.

I want to make clear that these comments are my own and are not offered on behalf of any organization or other person.

Sincerely,

George A. Steele