

Washington State Supreme Court

POB 40929

Olympia , Wash. 98504-0929



Washington State
Supreme Court

Re : Comment on Proposed Public Defender Rules-CrR 3.1 .
CrRLJ 3.1 , JuCR 9.2 STDS

Dear Justices ,

My name is Stephen Kozer . I have been practicing since 1984 . Most of my practice has been in criminal law, the majority as a public defender. I have seen a lot of changes in the law and in the public defender system in different counties.

Historically, Mr. Bob Boruchowitz who was an attorney and the Director of the Defender Association for many years. had historically moved for a lesser caseload . He has been a proponent of such since as long as I can remember , since 1984. In the last several years Mr. Larry Jefferson a public defender, and now the head of the Office of Public Defense has been a proponent of the same . As is the nature of bureaucracies the Office of Public Defense has gone from approximately 15 staff members to over 40 staff members . This may well be justified as the OPD has taken on various indigent representations on a statewide basis .

And that is the point. The proposed rules would cause the criminal justice system to implode and create a new bureaucracy. It is foreseeable that Washington State would go to a statewide public defender system, perhaps based on a "regional center system". A statewide public defender system would not solve the lack of competent attorneys / public defenders. Although it may be cynical, my view is that the proposed rules seek to have the system implode, so that it can be recreated. The proposed rules simply call for more money to be thrown at the problem but does little to solve it. Approximately 10 to 15 years ago case load limits were adopted. This was to solve the "problem".

Also by way of background the President of the Washington Defender Association called for a "snap election/meeting" to have these new proposed rules "approved" by the WDA. I understand that there was barely a quorum, and that the "snap election" was done so as to eliminate those Public Defender Directors who opposed the new proposed rules. Thus the approval of the proposed rules by WDA. I also understand that the Director of one office has withdrawn his organization from WDA membership because of the manner in which this "approval" was done. Frankly many of the WDA CLE's do not deal with the practice of law but really foster a political agenda. You can call it "social justice" or any other name but rarely do these CLE's concern the nuts and bolts of practicing criminal law or concern the State and Federal Constitutions.

Overwhelmingly , the presenters political views are embedded in the presentation.

It is also concerning that the Washington State Bar Association approved the proposed rules. It is hard to imagine that the current members of the Board of Governors have any real insight into the public defender system (except one) . The approval of the proposed rules by the WSBA is more of a “feel good” vote and really is to foster a “social position” . In the end it was approved with no real knowledge of public defenders nor the public defender system from county to county .

But my comments are not to just say NO to approving these new proposed rules but to offer some solutions that may help to alleviate the shortage of public defenders.

First I would suggest that law schools in Washington State (and throughout the country) have internships with both the Public Defender Offices and the Prosecutor Offices (I understand that prosecutor offices have the same problem in hiring new and retaining new recruits). That the interns be a “Rule 9” and that they be given credit towards graduating law school for such 1 year or 6 month internships . As a Rule 9 , with supervision they can go into court and start handling at least misdemeanor cases .

Although I understand that this Court cannot change the curriculum of a law school , the Court could suggest to the law schools , certainly the ones in Washington State, that they

should set up clinics , under supervision by an experience criminal attorney , so that law students can learn to handle criminal cases and become familiar with criminal procedure. So often new hires are afraid to go into court and because they are unsure of themselves in court , they resort to just doing pleas.

Second, as the Supreme Court has changed the rules to become qualified as an attorney in this State, then perhaps this Court can amend the rules to make it mandatory that a new applicant to the Bar have an internship in either a public defender office or prosecutor office in order to practice law.

Third , the WSBA has a Pro Bono program. I would suggest that each private attorney in the State be required to handle 10 misdemeanor cases and 2 felony cases per year as a required Pro Bono service and that Judges across the State have a list of attorneys so that they can call upon them and have them serve as defense counsel .

I would also like to add that at the inception of the Washington State Criminal Justice Center , the Center was to be used for Law Enforcement , Prosecutors and Defense Attorney Training. Noting the “natural antagonism” of both sides in the adversarial system ,I cannot recall any such training in Burien for defense attorneys since 1984 . It would certainly be good if each “side” could get together to see the others perspective - sorry to digress . That is to say there are other resources available that should be looked into first.

But this does take me back to the training of the defense bar . It should be required that CLE's cover Constitutional issues such as Search and Seizure , First Amendment issues, Equal Protection issues, and not political agendas . This Court can require that.

One further observation of mine and others is the fact at least one Director of a major Public Defender Office on the westside of the State told me that many of the new hires , are labeled "coffee house public defenders" because after 6 or 8 months they quit . They quit not because of the pay, but because the work is too hard. They rather go out and protest some cause and not protect the Constitution. I have observed the lack of work ethic with young attorneys and God forbid that they have to give up a weekend to get ready for trial – but this lack of work ethic and dedication to the profession cannot be cured by any new rule , a reduction in case load , more money in a salary or a new statewide system of public defense .

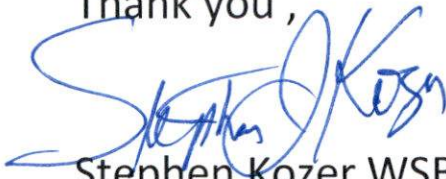
This brings me back to the point that this sense of work ethic and dedication to the Constitution and criminal justice has to be instilled at the earliest moment in the law schools! It has to continue and be nurtured in continuing education classes throughout the attorneys career . Only in this way can we have an honorable profession and uphold the Constitutions.

Perhaps this Court can come up with other ideas that would help to alleviate the lack of attorneys entering into public

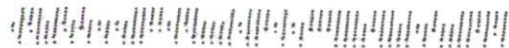
defender offices and prosecutor offices .That really is the problem .

Again I write to say that these rules should NOT be adopted . To do so would implode the public defender system across the State and cause to be created a new system that would not necessarily attract new attorneys nor retain them in public defender offices.

Thank you ,

A handwritten signature in blue ink, appearing to read "Stephen Kozer", is written over the printed name.

Stephen Kozer WSBA #14413



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Comments on
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