



WSBA COUNCIL ON PUBLIC DEFENSE MEETING AGENDA

NOTICE IS HEREBY GIVEN by the Washington State Bar Association, pursuant to RCW 42.30.080, that the Council on Public Defense meeting will be held on:

April 7, 2020 | 10:30 AM to 11:30 AM

Link to access the Zoom meeting: <https://zoom.us/j/482507102>

WSBA conference call: 1-857-288-2638, code: 52874#

The purpose of the meeting is for the Council to discuss, deliberate, and take potential final action regarding the following agenda items:

3 min	Welcome and Roll Call	Daryl Rodrigues	Discussion	
2 min	January and February Meeting Minutes	Daryl Rodrigues	Action	pp. 2-10
10 min	Support for Proposed Amendments CrR 3.1, CrRLJ 3.1 and JuCR 9.3 – Right to Appointment of Expert Witnesses in Juvenile Proceedings	Magda Baker and Hillary Behrman	Action	pp. 11-15
10 min	Support for Amendments to CrRLJ 3.4 - Presence of the Defendant	Jaime Hawke	Action	Proposed changes to CrR/CrRLJ 3.4 p. 16
30 min	COVID Updates	Travis Stearns	Report	
5 min	Announcements	Everyone		

Next meeting will be on Friday, May 22, 2020 from 10:00 a.m. to 12:30 p.m.

Reasonable accommodations for people with disabilities will be provided upon request. Please email carolynm@wsba.org.



Washington State Bar Association

COUNCIL ON PUBLIC DEFENSE

JANUARY 24, 2020, 12:00PM TO 2:30PM AT THE WASHINGTON STATE BAR ASSOCIATION, SEATTLE, WA
MINUTES

CPD members in person: Daryl Rodrigues (Chair), Travis Stearns (Vice-Chair), Louis Frantz, Joanne Moore, Justin Bingham, Jason Bragg, Kathy Kyle, Jaime Hawk

CPD voting members on the phone: Judge Patricia Fassett, Christie Hedman, Matt Anderson, Judge Drew Henke, Nick Allen, Abraham Ritter, Colin Fieman, Kim Ambrose, Justice Sheryl Gordon McCloud

CPD non-voting members: Bob Boruchowitz, Ann Christian

WSBA Staff: Diana Singleton, Carolyn MacGregor

Guests: Sophia Byrd McSherry, Barbara Harris, Jason Schwartz, George Yeannakis, Maya Ramakrishnan

Absent: Commissioner Randy Johnson, Rebecca Stith, Natalie Walton-Anderson, Eric Hsu, Deborah Ahrens, Rachel Cortez, Eileen Farley

November Meeting Minutes: Justin moved to approve the minutes. Louis seconded. No nays or abstentions. Motion passed.

Office of Public Defense Report: Joanne introduced Barbara Harris as new to OPD, serving as Disproportionality Legal Training Coordinator. Barbara has an extraordinary background for this position and is helping to launch all the initiatives affecting indigent individuals.

Washington Defender Association Report: Skipped.

Proposed Changes to Standards in Death Penalty-Related Court Rules (CrR3.1, CrRLJ 3.1, JuCR 9.2): Travis referred to proposals to remove all references to death penalty in these court rules, which all affect indigent defense standards. Travis is concerned that the death penalty could be reinstated, so asked for a discussion. Comments close in April. Justice Gordon McCloud feels able to join in discussion. She is concerned with removing these references as well and sees the standards as protective; many agreed that it would be difficult to reinstate references once removed. Bob worked on and is proud of rules in question and is very concerned, as they led to removal of the death penalty and Gregory. Frantz says only if legislature removes the death penalty, would removing the references be okay. Travis will draft comments in the next few days, and the required supermajority vote on submitting them will be held at Feb. 7 meeting. At least 17 members must participate in some portion of discussion and vote in order to submit.

Travis said that indigent appellate guidelines were approved by the WSBA Board of Governors with two edits to remove the words "zealous" and "courage and devotion" from the first section. Travis asked if there was any concern from CPD on these edits. No one objected so Travis confirmed he would move forward with working with the WSBA to submit the guidelines to the Supreme Court.

Recommendations from OPD Report on Standards Implementation: Sophia has collected comments. There is consensus to amend the certification form, requiring attorneys to be certified in every court they practice in. There is agreement to change “should” to “shall” with regard to caseload limits. The question of creating an enforcement mechanism came up—perhaps add a new paragraph stating that courts shall require attys. to certify compliance with applicable standards. Also question of which entity should do enforcing? Travis wants the end user to have an entity that would help clients to determine if they are appropriately represented. Bob suggested that for those with mixed practices it’s important to make sure that the percentage of time the public defense attorney spends matches the number of cases assigned. Travis is concerned that anything put in comments section of certification form will not be read. Bob says to indicate at top of form that this applies to all public defense. Travis notes the goal is making it as easy as possible to ensure compliance.

There was discussion of how to enforce without creating undue fear and worry for those in the position of taking on these jobs without sufficient resources. Can focus be on persuasion and encouragement? Joanne suggested adding the term “in good faith” to the form. Bob suggested the sentence: “timely and truly file a certificate of compliance in conformance with the form,” which could address folks not filing or lying on forms. Daryl said that there’s no entity to help those working within larger agencies with compliance.

Sophia noted that forms are submitted one quarter per year with applications for grant funding and reviewed for anything concerning. Travis noted that OPD is not an enforcement agency but still has influence. Bob asked if OPD can share information of concern with CPD to follow up on, if communities are used to certain practices. Travis suggests carrot approach with offering more funding.

Sophia’s committee will discuss further and present two options for another discussion. She will also will draft comments re certification issues.

Independence Committee Report: Sophia said that comments were generally favorable to Standards 18 and 19 re public defense contracts. There was discussion as to whether a judicial member should be involved, even if not controlling the process—that it’s helpful to hear judges’ views but it should not be part of decision making. Judge Fassett pointed to comment from Judge Hancock regarding a conflict with constitution. Bob doesn’t think this precludes the Perala case and is aware of a judge misusing appointments. Ann suggests that there be more discussion with the Independence committee around Judge Hancock’s concerns.

Standards Committee Report re Persistent Offenders: Bob said that the committee asked for a lot of input from practitioners around state regarding 7.1. He would like CPD to vote on March 27 and asked for questions from council members in advance to help expedite the vote during the meeting. Kim asked if there are other areas to address now as well, such as cooperation post-conviction. Bob said that the next priority after persistent offender is re-examining misdemeanor standards. Travis asked Bob to recruit someone with experience in misdemeanor court to join the committee.

Legislative Agendas: ~~Christie reported that this is a short 60-day session and they are working fast and furious. There is more positive legislation this year due to being an election bill. Hard-on-crime bills are not likely to move. Rep. Inwin agreed to sponsor and a county bill to have the state take over public defense completely and is committed to work on it further and reintroduce in place of his current bill. Christie is looking at language and funding (possibly WA State Institute for Public Policy) by early next week and would welcome CPD comments. WDA does not take position on what the model should look like as long as there is appropriate accountability—50% state and 50% local keeps both sides honest and provides flexibility at the local level. A workgroup with a~~

~~model similar to CPD will convene in March and present recommendations in Sept. 2021. Sophia said that OPD would want to be part of the task force.~~

Christie reported that this is a short 60-day session and they are working fast and furious. There is more positive legislation this year due to it being an election year. Most hard-on-crime bills are not likely to move. Rep. Irwin agreed to sponsor a county bill to have the state take over public defense completely but the bill hasn't been scheduled for a hearing. He is committed to work on the issue further during the interim and willing to introduce a bill striker or budget proviso this year to create a statewide public defense workgroup and study. Christie is looking at developing language (possibly using the WA State Institute for Public Policy for the study) by early next week and would welcome CPD input and comments. Sophia and Daryl volunteered to assist with the language and OPD would want to be part of the task force. She noted that WDA does not take position on what the model for provision of public defense should look like as long as there is appropriate accountability. Currently, WDA supports 50% state and 50% local funding which keeps both sides honest and provides flexibility at the local level.

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Others legislative items:

- Christie also shared about a bill re indigent defense funding would expand the number of people who can be with their children and get early release. Prosecutors are neutral on it. Hoping the bill will move but may need to start over next year.
- Three strikes bill—if it's removed, would be retroactive, but it's not clear whether it's likely to go through.
- Bill 2231 is expected to be voted out of committee next Thursday. The standard ranges are greater than that of original charges.
- Regarding sexual violence cases, they are trying to get more folks out into the community. Bills in the past have been costly and restrictive to clients. There are changes that the AG and others all agree on in favor of more releases and safe housing in the community.
- Death penalty bill is expected to take three hours of floor time, so it's not a priority this session with so many other bills active.
- Bill 2277 is trying to end juvenile solitary confinement. There are many bills sponsored by this one legislator, so it's not clear which will have enough votes to get through the House.
- Bill 1814 re Involuntary Treatment Act would extend allowable time period to detain someone from 72 hours to 5 days. Jaime noted that the additional time is not necessary and detrimental to clients.
- Jaime spoke about the bill on voting rights restoration. She said there was a great hearing, but Senator Kuderer wants to delay implementation for a year. There is a lot of Republican pushback, asking for carve outs. This bill would restore voting rights as soon as a person is let out of custody.
- Sophia spoke about Bill 6215, sponsored by Senator Braun, which would amend indigent statute to require DSHS to establish whether someone is receiving public assistance to determine whether they would get public defense. An electronic verification system already exists.
- Jason Bragg has been really active in child welfare reform and commented on Bill 5533 regarding a certificate of parental improvement which is critical for parents seeking restoration. A finding of abuse and neglect can stick forever.

CPD Committee Engagement Survey: Travis is waiting for approval on survey so he can circulate soon. He is hoping for thoughtfulness in responses for improving council.

Announcements: There is a conflict with April meeting, so it was decided that March 27 will be a full council meeting at WSBA and that committees would meet in April sometime during the week of April 20. Committee chairs will send out information about planning the committee meetings.

Bob mentioned his upcoming conference: [The Defender Initiative 10th Annual Conference on Public Defense](#), on Feb. 28, focusing on race.

Meeting adjourned at 2:37 pm.

DRAFT



Washington State Bar Association

COUNCIL ON PUBLIC DEFENSE

FEBRUARY 7, 2020, 12:00PM TO 2:30PM AT THE WASHINGTON STATE BAR ASSOCIATION, SEATTLE, WA
MINUTES

CPD members in person: Daryl Rodrigues (Chair), Travis Stearns (Vice-Chair), Louis Frantz, Justin Bingham, Jason Bragg, Kathy Kyle, Jaime Hawk, Eric Hsu, Judge Drew Henke

CPD voting members on the phone: Judge Patricia Fassett (abstaining), Christie Hedman, Nick Allen, Abraham Ritter, Justice Sheryl Gordon McCloud, Joanne Moore, Commissioner Randy Johnson, Rachel Cortez, Deborah Ahrens, Matt Anderson

CPD non-voting members: Ann Christian

WSBA Staff: Diana Singleton, Carolyn MacGregor

Guests: Sophia Byrd McSherry, Jason Schwartz, George Yeannakis, Darrin Hall, Starck Follis, Maialisa Vanyo. Kyle Berti, Maya Ramakrishnan

Absent: Rebecca Stith, Natalie Walton-Anderson, Eileen Farley, Kim Ambrose, Bob Boruchowitz, Colin Fieman

January Meeting Minutes: Louis moved to approve the minutes. Justin seconded. No nays or abstentions. Motion passed.

Proposed Changes to Standards in Death Penalty-Related Court Rules (CrR3.1, CrRLJ 3.1, JuCR 9.2): Travis introduced the issue up for a vote: Justice Fairhurst proposed changes to court rules striking references to the death penalty. Particularly of concern are those that refer to caseloads including death penalty cases. Travis believes that the rules and standards should include what would be considered qualified representation in these cases. He proposed submitting a comment on the rule that he believes falls under CPD's purview. The vote before the Council is whether to adopt the comment.

George offered that the statute on the books is unconstitutional. Senate just passed a bill, which is heading back to the House, to eliminate the death penalty statute. These removals would go along with the bill. He is concerned that if the references are left in it would be easier to reinstate the rule and asked if the Board can wait until the legislative session is over, in case the DP statute is removed. Travis is concerned about timing; comments are due April 30, but a CPD comment needs to go in front of the BOG first. There was agreement to not submit a comment if the statute changes, or add a note to make clear that there is no need for DP-qualified lawyers if there is no Death Penalty. Joanne mentioned that the statute is unconstitutional due to way it was written, as opposed to the penalty itself (referencing Times editorial); she is in favor of adding a comment regarding the possible legislature decision. CPD could then withdraw comment before April if no longer relevant.

Diana suggested moving forward with getting onto the BOG agenda. Kathy moves to adopt the comment with proposed addendum relative to passage of the statute.

Death Penalty 2-part vote: 1. Does the comment fall into one or more of CPD’s 11 issues, within the scope of the charter? 2. Should comment with added note/clarification be sent to the BOG for review? Vote was unanimously yes for both questions.

Part One

Part Two

Last Name	First Name	Yes	No	Abstain	Absent	Yes	No	Abstain	Absent
Ahrens	Deborah	x				x			
Allen	Nicholas	x				x			
Ambrose	Kimberly				x				x
Anderson	Matt	x				x			
Bingham	Justin	x				x			
Jason	Bragg				x				x
Cortez	Rachel	x				x			
Judge Patricia	Fassett			x				x	
Fieman	Colin				x				x
Louis	Frantz	x				x			
Haw k	Jaime	x				x			
Hedman	Christie				x				x
Judge Henke	Drew	x				x			
Hsu	Eric	x				x			
Johnson	Randy	x				x			
Kyle	Kathleen	x				x			
Justice Gordon-McCloud	Sheryl			x				x	
Moore	Joanne	x				x			
Ritter	Abraham	x				x			
Rodrigues (Chair)	Daryl	x				x			
Stearns (Vice-Chair)	Travis	x				x			
Stith	Rebecca Walton-Anderson				x				x
Natalie					x				x

Not Guilty by Reason of Insanity Court Access: Darrin Hall, Patient Ombudsman for DSHS, came to ask for support for NGRI patients trying to get representation in order to transition out of the state hospitals (treatment levels 4-6).

Darrin said that all NGRI patients are considered indigent and entitled to counsel. Court orders are needed for patients to access levels 4-6 of treatment, in which they receive greater privileges which no do involve a security presence (unescorted rounds, integration into the community, discharge). The greatest obstacle is finding representation to get before the court. Darrin has been traveling around the state educating practitioners about

responsibilities in post-adjudication process. He often sends a request to all possible parties trying to get someone to pay attention. When they don't have appointed counsel, no way to get before court and get a motion heard. Daryl asked why not file a motion for appointment. Could CPD help streamline the process?

Darrin pointed to the significance of gaining liberties within treatment. At level 4, the patient has reached maximum treatment capacity within hospital walls. Liberties are PART of treatment to reintegrate but there is extreme difficulty advancing folks through once reaching court-dependent levels. One patient waited 2 ½ years for counsel. On any given day, 210 NGRI patients are housed among the three state hospitals. There is still a need for counsel even once out in community. With NGRI patients, the goal is NOT confinement—they should be moved through confinement as soon as possible. With each delay comes a clinical treatment problem. Advocacy is required to get heard. Darrin believes that lawyers mostly don't know the situation, rather than showing willful disregard. The difficulty is figuring out to get attorneys appointed and paid. He has talked to the BOG president about this as well. He is interested in helping CPD draft rules and/or standards.

Daryl asked who pays defense costs. Darrin said that most counties have NGRI patients and the county of origin retains jurisdiction. Daryl compared to RCW 71.09 (sexual predators) where clients are supposed to be appointed counsel who specialize. Daryl also suggested creating lists of local practitioners.

Darrin spoke to this as a systemic issue. When an NGRI client doesn't get what they want, they blame their social workers and treatment team, who are helpless in the situation, and this does not advance the course of treatment.

Travis noted that CPD can't go to the legislature but could help draft standards.

Jason Schwartz mentioned that he's had cases before that were handed off numerous times. Those cases should go to appointing agency so that a letter doesn't go into a void. Darrin said that it can be difficult to locate the assigned lawyer after long passage of time. He sends the letter to the court, prosecutor, appointing agency, and court clerk. Louis said that the appointing authority needs to be worked with.

There was discussion regarding creating standards for what a caseload should be, and how much work. Daryl said guidelines would be helpful because there will be mixed load cases. These are vulnerable clients. Who is watching over follow up? The long complicated sentencing structure with numerous stages seems similar to that in juvenile cases. Should representation continue into post-adjudication stage?

Travis suggesting sticking to clients not getting representation. Jason Schwartz is wanting to talk with Darrin and mentioned 71.05 similarity. Christie offered to help as well. All agreed to start addressing this issue with a small workgroup.

Washington Defender Association Report: Christie Hedman reminded everyone of Bob Boruchowitz's upcoming Defender Initiative Conference, which she is pleased to co-sponsor. The WDA conference is at the end of April. They are holding a leadership training just ahead of the conference, and hoping for at least 65 attendees.

Christie gave an overview of the relevant pending legislation including a budget proviso.

Proposed Rule re: Expert Compensation: Christie spoke on behalf of Magda and Hillary at WDA who would like support for comment on proposed changes to CR3.1F. Request for expert funds not being treated in ex parte manner. Defense attorney may request expert funds. Changes to CR 3.1F. Travis asked if that would make it not

possible to ask for expert funding that is non ex parte? Christie said that has been discussed and it was decided that in the balance it would be better to be required, but is certainly an issue. Eric thought to include “it shall be made and reviewed by the Court as ex parte,” hoping that language will clearly state this if the court delegates by local rule. Sophia asked if it would get in the way of processes currently working well, such as experts funded through an agency. Could you go to court if an agency is denying funds? Daryl asked if this was a fair reading of the issue. The question of “may” and “shall” in the 2nd paragraph were found to be confusing.

Christie said that they are not trying to interfere with existing processes, but she has only been involved at a high level, so she will take these concerns back to Magda and Hillary. The vote was postponed to the next meeting.

Office of Public Defense Report: Sophia reported that regional CLEs are scheduled for March 27 (Yakima) and March 13 (Moses Lake).

Regarding Senate Bill 6215 and the DSHS online screening tool, it was amended to be more neutral, such that courts *may* use it and share information about its availability.

OPD will offer its 2nd summer criminal defense training academy in Spokane, as well as a Juvenile track at the WDA conference in which they’ll work through one hypothetical case.

Advisory Opinion re: Conflict Checks and Case Load Standards: Starck Follis and Maialisa Vanyo visited from the Whatcom County Public Defender Office. Starck is in his 3rd year as director of the office, and has realized that none of the counties treat conflict cases the same, and this is problematic when trying to determine funding needed. Most offices have fewer conflict cases and don’t accept co-defendant cases, although it’s not prohibited, just unadvisable.

He’s not sure if CPD can help. He went to WSBA Ethics for some guidance and Jeanne Cleveare suggested CPD offer an opinion re: position on whether agencies should handle co-defendants (public defender agencies in WA), Starck doesn’t feel he should be deciding about co-defendant cases. The question is whether potential representation of one defendant will limit representation of the other, and if in accepting co-defendant cases, the office will need more lawyers.

Travis –said that CPD guidelines don’t have anything that speak to this issue.

Joanne and OPD have not been able to figure this out either. Daryl wants to put it before the Guidelines committee, and possibly address before misdemeanors. He will speak with Bob.

To take before the WSBA Ethics Council, these criteria must apply: wide ranging application, the issue is largely unresolved, and no other body could provide the answer.

Travis says would like to discuss it as group and return in March with a response. The issue was moved to the Guidelines committee and Starck will be invited to participate by phone. Ask Patrick O’Connor to attend. Kathy Kyle was interested, along with Eric Hsu. Cassie Trueblood was mentioned as well.

CPD Committee Priority Setting: Travis began a discussion about reviewing priority setting after the change in membership structure that brought in a number of new members. He’d like to hear about what the group would like to be and what would be most useful.

Travis read through some of the responses (12 total) to his subcommittee interest survey. Members agree that the funding and quality of the public defense system needs to get better. The chairs will keep bringing issues to the council, for example, rural public defense in March. Committee interest: 37% public defense, 37% standards and guidelines. 12.5% LFO and reentry (they may separate these two topics). 12.5% in pre-trial reform. They are also open to creating special subcommittees and would like to know what they can do better to make the experience more engaging?

Joanne noted that it's difficult for her to attend in person, and a discussion about meeting times ensued, considering time and day, and frequency of meetings. Travis said that with the BOG schedule and structure, fewer meetings would make it difficult to accomplish much.

A Friday morning meeting time and occasional meetings outside of Seattle, possibly in a rural locale, were suggested. Diana said deciding on that soon would be helpful so she could request the additional travel expense in the budget. Daryl said she should go ahead with that.

There was a question as to whether committees should be institutional or more ad hoc, and Justin said that task-based could be more valuable/effective. A focus on rural issues was also suggested. Diana mentioned that WSBA is currently looking at the issue of legal deserts in rural areas, and they could include CPD's perspective. Dependency law was also mentioned, in connection with Jason's expertise.

The last topic mentioned was the role of race in cases and how many folks working in PD offices do not look like the clients. The possibility of creating guidelines for training on race was mentioned. Daryl offered that social science supports better outcomes when clients placed with providers of like ethnicity.

Announcements:

Jaime is asking CPD to comment on CR 3.4 that would allow counsel to submit a waiver. Comment accepted until April 30.

Christie brought up House Bill 2231 re bail jumping and said that action alerts are available to sign onto. Proposed change gives the defendant 30 days to quash warrant before being charged with felony bail jump. She is hoping that Pettigrew will pull it out of Rules.

Meeting adjourned at 2:23 pm.



October 14, 2019

The Honorable Charles Johnson, Chair
Supreme Court Rules Committee
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929
VIA U.S. MAIL AND EMAIL

Re: Suggested Changes to Superior Court Criminal Rule 3.1(f), Criminal Rule for Courts of Limited Jurisdiction 3.1(f) and Juvenile Court Rule 9.3(a)

Dear Justice Johnson:

The Washington Defender Association (WDA) is submitting for the Washington Supreme Court's consideration the enclosed suggested changes to CrR 3.1(f), CrRLJ 3.1(f) and JuCR 9.3(a). These suggested changes mirror those we proposed in our March 2019 comment on our October 2018 rule proposal. We greatly appreciate the Court's willingness to reconsider our suggestions.

Under CrR 3.1(f) and CrRLJ 3.1(f) as currently written, a defense attorney "may" request expert funds *ex parte*. We suggest substituting the word "may" with "shall." We seek similar changes to JuCR 9.3(a). Under that rule, an attorney who represents a juvenile client may request expert funding, but the rule does not currently specify that the attorney may do so *ex parte*. We suggest language that would clarify that juvenile defenders shall ask for expert funds *ex parte* and that, as in superior courts and courts of limited jurisdiction, juvenile courts may seal those requests upon a showing of good cause.

We are available to answer any questions. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Magda Baker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Magda Baker, Misdemeanor Resource Attorney

Enclosures
cc: Shannon Hinchcliffe, AOC

1 **GR 9 Cover Sheet**

2
3 **Suggested Changes to CrR 3.1, CrRLJ 3.1 and JuCR 9.3**

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5 **(A) Name of Proponent:** Washington Defender Association

6 **(B) Spokesperson:** Magda Baker, Misdemeanor Resource Attorney, Washington Defender
7 Association

8 **(C) Purpose:** The Washington Defender Association (WDA) suggests changes to CrR 3.1(f),
9 CrRLJ 3.1(f) and JuCR 9.3(a) that would ensure that criminal defense attorneys who
10 request funds for experts on behalf of indigent clients in superior courts, courts of limited
11 jurisdiction and juvenile courts do so *ex parte*. WDA has heard from defenders who have
12 requested expert funds *ex parte* only to have judges invite prosecutors to weigh in on
13 their requests, which allows opposing counsel a preview of the defense's trial strategy.
14 The changes we propose would eliminate that practice and any chilling effect it may have
15 on defenders considering requests for expert funds. Such changes would also lead to a
16 more uniform administration of justice throughout the state, since currently some judges
17 seek prosecutorial input on defense requests for expert funding while others do not.
18 Finally, the changes would promote a more level playing field for defenders and
19 prosecutors, since prosecutors can often consult with law enforcement employees as
20 experts or get expert funding from their offices without court approval.

21 **(D) Hearing:** None recommended.

22 **(E) Expedited Consideration:** Expedited consideration is not requested.

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1 *[Suggested changes to CrR 3.1(f)]*

2 **CrR 3.1 RIGHT TO AND ASSIGNMENT OF LAWYER**

3 **(a) – (e)** *[unchanged]*

4 **(f) Services Other Than Lawyer.**

5 (1) A lawyer for a defendant who is financially unable to obtain investigative, expert, or other
6 services necessary to an adequate defense in the case may request them by a motion to the court.

7 (2) Upon finding that the services are necessary and that the defendant is financially unable to
8 obtain them, the court, or a person or agency to whom the administration of the program may
9 have been delegated by local court rule, shall authorize the services. The motion ~~may~~ shall be
10 made ex parte, and, upon a showing of good cause, the moving papers may be ordered sealed by
11 the court, and shall remain sealed until further order of the court. The court, in the interest of
12 justice and on a finding that timely procurement of necessary services could not await prior
13 authorization, shall ratify such services after they have been obtained.

14 (3) Reasonable compensation for the services shall be determined and payment directed to the
15 organization or person who rendered them upon the filing of a claim for compensation supported
16 by affidavit specifying the time expended and the services and expenses incurred on behalf of the
17 defendant, and the compensation received in the same case or for the same services from any
18 other source.

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1 *[Suggested changes to CrRLJ 3.1(f)]*

2 **CrRLJ 3.1 RIGHT TO AND ASSIGNMENT OF LAWYER**

3 **(a) – (e)** *[unchanged]*

4 **(f) Services Other Than Lawyer.**

5 (1) A lawyer for a defendant who is financially unable to obtain investigative, expert, or other
6 services necessary to an adequate defense in the case may request them by a motion to the court.

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8 obtain them, the court, or a person or agency to whom the administration of the program may
9 have been delegated by local court rule, shall authorize the services. The motion ~~may~~ shall be
10 made ex parte, and, upon a showing of good cause, the moving papers may be ordered sealed by
11 the court, and shall remain sealed until further order of the court. The court, in the interest of
12 justice and on a finding that timely procurement of necessary services could not await prior
13 authorization, shall ratify such services after they have been obtained.

14 (3) Reasonable compensation for the services shall be determined and payment directed to the
15 organization or person who rendered them upon the filing of a claim for compensation supported
16 by affidavit specifying the time expended and the services and expenses incurred on behalf of the
17 defendant, and the compensation received in the same case or for the same services from any
18 other source.

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1 [Suggested changes to JuCR 9.3(a)]

2 **JuCR 9.3 RIGHT TO APPOINTMENT OF EXPERTS IN JUVENILE OFFENSE**
3 **PROCEEDINGS AND ASSIGNMENT OF LAWYER**

4 **(a) Appointment.** A juvenile who is financially unable to obtain investigative, expert, or other
5 services necessary to an adequate defense may request that these services be provided at public
6 expense by a motion. The motion shall be made *ex parte* and, upon a showing of good cause, the
7 moving papers may be ordered sealed by the court and shall remain sealed until further order of
8 the court. Upon finding that the services are necessary and that the juvenile is financially unable
9 to obtain them without substantial hardship to himself or herself or the juvenile's family, the
10 court shall authorize counsel to obtain the services on the behalf of the juvenile. The ability to
11 pay part of the cost of the services shall not preclude the provision of those services by the court.
12 A juvenile shall not be deprived of necessary services because a parent, guardian, or custodian
13 refuses to pay for those services. The court, in the interest of justice and on a finding that timely
14 procurement of necessary services could not await prior authorization, may ratify services after
15 they have been obtained.

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17 **(b)** [*unchanged*]

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DEFENDERS:

I'm emailing to ask you to submit a comment to the Washington Supreme Court in support of a court rule proposal. **The Washington Defender Association (WDA) has proposed changes to CrR 3.4 and CrRLJ 3.4 that would limit the court hearings at which a defendant's physical presence is required.** Defendants would still be required to personally appear at arraignment, all stages of a trial, and sentencing, but they could appear through their attorney at other hearings unless a judge issues a written order based on good cause that specifically requires their attendance at one or more of those hearings. You can see our proposal by following the links [here](#).

We hope that if the Supreme Court adopts the proposed changes, they will lessen three problems we see in the criminal justice system. The first is the burden of multiple court dates that comes with being accused of a crime and can cause defendants with limited incomes to scramble to look for child care or transportation to court and to miss work. The second is the multitude of bench warrants that issue when defendants miss court. The third is the proliferation of charges of bail jump that can sometimes be unduly harsh and coerce defendants into plea bargains.

It would be very helpful if you would submit a comment in favor of the rule proposal. Comments are due by April 30, 2020. They can be as short as a few sentences. You can find information on how to submit a comment [here](#).

Thank you for your consideration! Let me know if you have questions.

Jaime Hawk