

THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR CLALLAM COUNTY

JUDGES

Erik Rohrer  
Christopher Melly  
Brian P. Coughenour



Courthouse  
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Port Angeles, WA 93862-3015

360.417.2386

COMMISSIONER

W. Brent Basden

October 18, 2017

Honorable Mark Ozias  
Honorable Randy Johnson  
Honorable Bill Peach  
Board of Clallam County Commissioners  
223 E 4<sup>th</sup> St, Ste 4  
Port Angeles, WA 98362

RECEIVED  
CLALLAM CO. COMMISSIONERS

OCT 18 2017

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*Re: Indigent Legal Defense*

Dear Commissioners:

It seems like every year there is an attempt to solve some perceived problem with the delivery of indigent legal defense in our county. It has come to our attention that this year is no different.

We write to make it clear that the superior court continues to be satisfied with the legal services provided by the Clallam Public Defender. We do not believe there are issues requiring a significant change to the current system.

Last year, we applauded your decision to seek recommendations from a broad range of uniquely qualified participants through an ad hoc committee addressing public defense services. The committee's recommendations are the product of thoughtful consideration and are consistent with our own analysis of the situation.

The committee specifically addressed various options, including options that are apparently back on the table again now—less than a year after the committee reached its final recommendations. The committee discussed how separating out district court so it would have its own system of public defense would “result in duplication of services and would not allow for the training and development of lawyers to move up to representation in superior court.” They felt it would not be cost effective and that conflicts between the district court and the public defender's office could be resolved by established grievance procedures.

Ultimately, the committee favored retention of the current system because it is (1) cost effective to have one agency for indigent court representation; (2) the current office has a committed staff and director; (3) the current office has established facilities and; (4) enjoys a good local community reputation.

While the committee discussed *salary* parity between the public defender's office and the prosecuting attorney's office, our position is that the system works best when there is across-the-board parity

between the two offices. In other words, both offices need to be equally well funded and staffed for the system to work properly. Both offices should have similar office structures and hiring practices.

Part of our concern about any change to the status quo is based on our memory of how the system worked before we had the current system of public defense. In our view, there were strong reasons for changing the old system to what we currently have—changing back to the way it was previously done is literally a step backward. At minimum, we should be moving slowly and deliberately and including as many stakeholders as possible in this discussion.

Although we have not received any official word as to the details of what is currently being considered, we strongly believe that the proposal raises serious ethical issues. For example, it would not be appropriate for any judicial officer to have any role in or influence over the selection of the attorneys who routinely appear before that judicial officer.

While the current proposal may not directly impact superior court, we are concerned about the possible side effects of continually addressing and readdressing this issue on an annual basis.

One practical side effect is that the public defender's office has to unnecessarily divert significant amounts of time each year to address the same issue. This is time that could be spent providing meaningful indigent legal defense to clients.

We anticipate that if district court indigent defense is handled by less experienced attorneys, there will be an increase in appeals from district court to superior court (RALJ appeals) which will lead to an unnecessary increase in workload at the superior court level.

Another issue that could potentially impact superior court relates to resolving matters when a defendant has cases in both superior and district court. It is a much more streamlined process if one office represents the defendant in both courts when these types of "global resolutions" are entered into.

Finally, we value and rely on the expertise of the public defender's office in complex matters, such as those involving mental health, competency, extradition, involuntary treatment act (ITA) issues, etc. Most defense attorneys do not have the kinds of hands-on experience with these and similar issues that experienced public defenders have. We are concerned about moving in a direction that could undermine the Clallam Public Defender's ability to obtain and retain qualified attorneys.


For the same reasons that the committee you commissioned last year concluded the current system should be continued, we are requesting that you re-examine whether there is actually a problem in need of solving and/or whether any solution warrants the adverse consequences associated with it.

Feel free to contact any of us if you would like to discuss this important issue further.

Sincerely,

  
Judge Erik Rohrer

  
Judge Christopher Melly

  
Judge Brian P. Coughenour

c: Jim Jones, Jr., Clallam County Administrator