



WSBA

COURT RULES & PROCEDURES COMMITTEE

SUPPLEMENTAL MATERIALS

FEBRUARY 25, 2013 MEETING

- Northwest Defenders Association supplemental report in response to the Memorandum from Subcommittee X regarding JuCR 9.3 (pp. 241-243).

NORTHWEST DEFENDERS ASSOCIATION

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Dear Members of the Rules Committee and Subcommittee X:

I am writing in response to the Memorandum Regarding Proposed Amendments to JuCR 9.3 provided by Gene Barton, Chair of Subcommittee X for consideration at the February 25, 2013 WSBA Court Rules and Procedures Committee meeting. I apologize for the late response. I received the memorandum on February 20th. It is my hope that the Committee will consider this supplement to their materials.

The two issues that concerned Subcommittee X and that led to them recommending that the proposed rule be rejected were the pending appellate cases cited by the Assistant Attorney General's office and their belief that the process of requesting expert service funds ex parte and under seal is exclusive to King County.

The Cases on Appeal Should Not Preclude the Proposed Rule From Being Adopted

While it is true that there is a case on appeal that addresses the issue of the proposed rule directly, the focus of much of the Assistant Attorney General's concern is actually alleged discovery violations. The AAG's main concern seems to be late disclosure of exhibits and witnesses. If the appellate court accepts the reasoning of Judge Kessler and Judge Doerty, a court rule is appropriate. If the appellate court does not accept that reasoning, the case will likely go to the Washington State Supreme Court, and the counties (see below) that are not participants in the Washington State Office of Public Defense Parent Representation Program will be left without a process to request expert service funds for a significant period of time as that case proceeds.

King County is Not the Only County Utilizing Motions Brought Ex Parte and Under Seal for Expert Service Funding Requests

During the Subcommittee X call there were no representatives from dependency practice outside of King County, and therefore there was no one who could speak to the process used in other counties to obtain funding for expert services. Since that time, Northwest Defenders Association has researched this issue and has the following update.

The Washington State Office of Public Defense offers a program called the Parent Representation Program (PRP) in Benton, Chelan, Clallam, Clark, Cowlitz, Ferry, Franklin, Grant, Grays Harbor, Jefferson, Kitsap, Kittitas, Klickitat, Mason, Pacific, Pend Oreille, Pierce, Skamania, Spokane, Stevens, Skagit, Snohomish, Thurston, Wahkiakum, Whatcom, and Yakima counties.

In those counties, the PRP administers the distribution of funds for expert services. In effect, all of these counties operate under a system analogous to the process set forth in the proposed rule. Dependency attorneys can request expert service funds without notice to the Assistant Attorney General's office and without being required to disclose trial strategy or work product to the AAG's office. Jacob D'Annunzio, an attorney who works with the PRP, was contacted about

the impact that the proposed court rule would have on counties that are enrolled in the PRP and reported that there would be no impact at all.

Counties that are not participating in the PRP are Adams, Asotin, Columbia, Douglas, Garfield, Island, King, Lewis, Lincoln, Okanogan, San Juan, Walla Walla, and Whitman. Northwest Defenders Association attempted to contact all of these counties to determine what process dependency attorneys in those counties utilize to obtain expert service funds. We received disconcerting responses or no responses at all from the majority of these counties. One exception is Island County, who reported that they request expert services by ex parte motion and under seal, just as King County does. Other counties who did respond reported that they rarely request expert services, and did not know what process they used; the attorneys were too new to know how to request expert services; or that they had a good “rapport” with the AAG’s office, and therefore, didn’t need to seal any motions.

The responses from these counties underscore the necessity for this rule. The process for obtaining expert services is unclear to dependency attorneys in numerous counties state-wide. Indigent parties in these counties are currently being denied effective assistance of counsel that is the privilege of affluent parties and parties in the Parent Representation Program.

It is requested that the Committee consider this information and move forward to approve the proposed amendments to JuCR 9.3.

Sincerely,



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Northwest Defenders Association