

Grant County to Overhaul Defense System

November 7, 2005

Settling a class-action lawsuit filed by the American Civil Liberties Union of Washington and Columbia Legal Services, Grant County officials have agreed to overhaul the county's system for providing legal defense to people charged with felonies who cannot afford an attorney. Under the settlement, the county will reduce excessive caseloads, guarantee that public defense lawyers are qualified to handle serious felony cases, and provide adequate funding for investigators and expert witnesses.

The parties will select a monitor to ensure compliance by the county during the six-year term of the agreement – the first time a county public defense system in Washington will be subject to comprehensive monitoring.

"The right of a person accused of a crime to be assisted by a competent attorney is fundamental to a criminal justice system that is fair to all. This settlement sends a strong message to counties that they need to provide public defense systems that are fair and effective," said Julya Hampton, legal program director for the ACLU.

The County agreed that its public defense system will comply with standards endorsed by the Washington State Bar Association and authorized by the Washington Legislature. In 1989 the Washington Legislature passed legislation requiring local governments to adopt standards for the delivery of indigent defense services. Yet a majority of counties in the state have not adopted these standards.

In 2005 the Washington Legislature enacted House Bill 1542 that would have established, for the first time, limited state funding for public defense programs that complied with the standards. Currently it is up to counties to fund public defenders for felony defendants who can't afford their own attorney. However, the Legislature failed to approve the funding, leaving the counties on their own in funding public defense and deciding whether to comply with, or even adopt, the standards. The ACLU will continue to work in the 2006 session to gain full state funding of House Bill 1542 to provide public defense money to counties throughout the state that pledge to comply with the Washington State Bar Association's standards.

"It is a miscarriage of justice when people in Washington who are indigent and accused of a crime are deprived of effective representation. The lack of standards and accountability means that accused people in some counties may not receive a fair trial. Poor people in our justice system should not have to fear that their constitutional rights may be violated," said Joachim Morrison, staff attorney at Columbia Legal Services.

The ACLU and Columbia Legal Services filed suit in April 2004 on behalf of Jeffrey Best, Daniel Campos and Gary Dale Hutt. The three were charged with felony offenses and alleged that Grant County's public defense system didn't provide indigent felony defendants with effective assistance of counsel. The lawsuit also includes a taxpayer plaintiff, Greg Hansen, who wants the county to provide constitutionally adequate defense to indigent persons and to use public funds wisely. The court granted the plaintiffs class-action status in August 2004.

The settlement came after Kittitas County Superior Court Judge

Michael E. Cooper ruled in October that indigent defendants in Grant County have a well-grounded fear of not receiving effective legal counsel from the County's public defense system. The judge found that Grant County's system overworked its lawyers, failed to provide effective supervision, and allowed the Grant County Prosecutor's Office to interfere with funding for expert witnesses and investigators.

In his ruling, Judge Cooper found it was "virtually uncontested" that the Grant County public defense system in place before April 2004 "suffered from systemic deficiencies, " such as public defenders with grossly excessive case loads or little meaningful supervision. Judge Cooper noted that although some improvements have been made with the 2005 public defense contract, serious problems persist in the current system – that "... it still creates a well-grounded fear of immediate invasion of the right to effective assistance of counsel."

In addition to the deficiencies listed by Judge Cooper, the lawsuit also argued that Grant County's public defenders:

- Failed to communicate with clients
- Did not interview potential witnesses
- Failed to use investigators or experts
- Failed to properly advise clients before entering guilty pleas
- Did not file critical legal motions

"We are very pleased with the settlement, which requires the County to comply with state and national standards, provides for a monitor and implements strong enforcement mechanisms," said David Taylor, an ACLU attorney in the case. "Nobody should face felony charges without the assistance of an effective and qualified attorney. This settlement should ensure that poor people in Grant County receive that assistance."

"We have a process to determine if a person accused of a crime should be deprived of life or liberty," added Don Scaramastra, co-counsel for the plaintiffs. "A qualified, committed, and effective lawyer is an absolutely essential part of that process. This settlement will help ensure that people in Grant County who can't afford such a lawyer get one."

The lawsuit has been handled by attorneys at the Perkins Coie and Garvey Schubert Barer law firms. The litigation team includes ACLU cooperating attorneys David Taylor, Breena Roos and Beth Colgan from Perkins Coie and ACLU staff attorney Nancy Talner. Garvey Schubert Barer attorneys include Don Scaramastra, Justin Dolan and Charles Cottrell and Lori Salzarulo. Attorneys who have handled the case for Columbia Legal Services are Pat Arthur, Joachim Morrison and Chris Kerkering.

The ACLU will continue to review practices in other counties to ensure that their indigent defense systems are constitutionally adequate. "[The Unfulfilled Promise of Gideon](#)," a 2004 ACLU report, showed that a majority of Washington counties lacked comprehensive standards for the delivery of public defense services, and recommended improved state assistance to ensure these publicly funded legal services meet basic fiscal and constitutional standards of accountability.