

## Conditions of Release

By: Brett Purtzer, Nov 2008

As we all know, the first formal step in representing an individual is the arraignment and bail hearing. Recently, Division II Court of Appeals focused on CrR 3.2 to assist trial courts in determining what can and cannot be imposed on the accused.

In State v. Rose, 2008 Wn.App. Lexis 2119, the court reviewed conditions of release involving three defendants and held that an order imposing weekly U/A's as a standard condition of pre-trial release is inappropriate. As we all know, CrR 3.2 sets forth the framework for the court to consider for purposes of setting pre-trial release conditions. Rose follows on the heels of Butler v. Kato, 137 Wn.App. 515, 154 P.3d 259 (2007), a Division I case, that held that a trial court did not have the authority to impose conditions of release that required a defendant charged with DUI to undergo an alcohol evaluation and comply with treatment recommendations. In Butler, the court held that the requirements were not only unauthorized by the court rule, but also unconstitutional.

In Rose, a comparable situation occurred when the trial court required a standard condition of weekly U/A's. Defense counsel argued that, at a minimum, such condition was inappropriate pursuant to CrR 3.2 and that weekly U/A's constituted an unconstitutional search.

The Court of Appeals' analysis started with CrR 3.2(a) which presumes an individual's release in non-capital cases. If the trial court determines that the accused is not likely to appear if released on personal recognizance, the Court "shall" impose the least restrictive conditions that will reasonably assure that the individual will appear for later court dates. The Court then went through each defendant's situation to determine whether the U/A requirement condition was appropriate and whether it had any relationship to the individual's likelihood to appear. Finding that the U/A requirement did not have any relationship to failures to appear, the Court struck down the condition. The Court also noted that under the "substantial danger" provision requiring U/A's was not an appropriate release condition.

The Court also reviewed whether mandating U/A's caused any Fourth Amendment concerns regarding unreasonable searches. The Court found that no exception to the warrant requirement existed to suggest that U/A's would be appropriate because there is no showing that drug use, or potential drug use, would likely cause an individual to fail to appear. As such, the U/A's were stricken as inappropriate conditions of release under this analysis as well.

The significance of Rose and Butler is that cases require more than a prosecutor's argument that conditions that have been imposed in the past are appropriate for each defendant

who comes before the court. Rather, the rule, and decisions interpreting the rule, requires a nexus between what is requested by the State and the factors set forth within CrR 3.2 to ensure an individual's appearance in court. Per both the rule and case law, only when the State overcomes the presumption of release on personal recognizance are conditions warranted, and those conditions are to be the least restrictive in order to assure the accused's return and to satisfy any community safety issues.

So, when reviewing conditions of release with the court, be certain to address the factors set forth within CrR 3.2 so that your client can, indeed, be released on the least restrictive conditions.

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