

Experts Love This One **By: Monte E. Hester; May 2006**

Hats off to the Supremes. Our Honorable Supreme Court unanimously held in State v. Rodin Punsalan, Washington Supreme Court Docket No. 77490-1 filed May 4, 2006, that the state is obliged to fund the expense of expert assistance to an indigent defendant even though his defense counsel is a privately retained attorney.

The trial judge had decided that CrR 3.1 (f) does not entitle indigent criminal defendants represented by private counsel to necessary expert assistance. On appeal the Court of Appeals, Division I, certified two such cases to the Supreme Court.

In each of the cases a parent or parents of the defendant retained private counsel. One superior court judge held that the right under CrR 3.1(f) to expect help at public expense was forfeited by retaining private counsel. The second superior court judge on the second case made a similar ruling.

The Supreme Court said the plain language of the rule makes no distinction between appointed and private counsel and that the balance of the language can only be read to provide for expert assistance to an indigent defendant in the instance of being represented by appointed or retained counsel. The court also observed that there is little opportunity for abuse because the trial court is going to evaluate a request for necessity and reasonableness.

This decision makes the playing field a little less of an uphill climb.

End

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