

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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In re the Personal Restraint Petition of Thomas Randall Hargrove

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MOTION OF THE WASHINGTON DEFENDER ASSOCIATION  
TO FILE *AMICUS CURIAE* BRIEF  
IN SUPPORT OF PETITIONER

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Amicus Curiae  
WASHINGTON DEFENDER ASSOCIATION, by  
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## I. RELIEF REQUESTED

The Washington Defender Association (“WDA”), by and through the undersigned attorneys, requests that this Court permit it to file an *Amicus* Brief in this matter pursuant to RAP 10.6.

## II. IDENTITY AND INTEREST OF AMICUS

The applicants, Cindy Arends Elsberry, and Hillary Behrman are attorneys licensed to practice law in this state and to bring this motion on behalf of WDA. They are experienced criminal defense attorneys who have had *amicus* briefs previously filed with the Court accepted.

The Washington Defender Association is a statewide non-profit organization whose membership is comprised of public defender agencies, indigent defenders and those who are committed to seeing improvements in indigent defense. WDA is a not-for-profit corporation with 501(c)(3) tax-exempt status.

The association’s objectives and purposes are defined in its bylaws as follows:

- A. To protect and insure by rule of law those individual rights guaranteed by the Washington and Federal Constitutions, including the right to counsel, and to resist all efforts made to curtail such rights;
- B. To promote, assist, and encourage public defense systems to ensure that all accused persons receive effective assistance of counsel;

C. To improve the administration of justice and to stimulate efforts to remedy inadequacies or injustice in substantive or procedural law;

D. To promote, update, publicize, and further the professional standards for attorneys in the provision of services in public defense systems and to encourage their use and implementation by government, public defenders, and public defender associations;

E. To improve the professional status of attorneys and to encourage cooperation between lawyers engaged in the furtherance of our objectives through publications, education, and mutual assistance; and

F. To engage in all activities on a local, state and national level that will advance the purposes for which this association is formed in order to promote justice and the common good of the citizens of the United States.

WDA representatives frequently testify before the Washington House and Senate on proposed legislation affecting indigent defense issues. WDA has been granted leave on prior occasions to file *amicus* briefs in this Court.

WDA represents 30 public defender agencies and has over 1400 members. The WDA Amicus Committee has approved filing of this motion and the accompanying brief.

The Washington Defender Association is the leading voice and support organization for public defenders throughout the State of Washington. WDA seeks to ensure individual indigent defense attorneys provide zealous and high quality legal representation through three main

avenues. First, WDA provides direct support to defense attorneys through individual case consultation and technical support. Second, through ongoing training and education seminars, WDA ensures that criminal defense attorneys are familiar with substantive criminal law, the law of criminal procedure, and that defenders stay abreast of new and emerging trends and developments in the law. Third, WDA advocates for systemic change and improvement, both to the criminal justice system and to the function of indigent defense, by collaborating with other justice system stakeholders and the broader community to bring about just solutions.

This case involves the issue of whether an indigent defendant received effective assistance of counsel in Grant County, Washington in 1998. After this case went to trial, the ACLU and Columbia Legal Services sued Grant County in a class action lawsuit challenging an inadequate system for providing for indigent defense services, *Best. v. Grant County*, 04-2-00189-0. Prior to trial, the parties reached a Settlement Agreement (“Agreement”) with Grant County agreeing to substantial reforms to the structure and funding of indigent defense in Grant County.

The Court’s decision in this case has potentially far-reaching implications to criminal practice in this State.

### III. FAMILIARITY WITH THE ISSUES

Ms. Elsberry and Ms. Behrman are experienced criminal defense attorneys. In preparing for the *amicus* brief, they have reviewed all the parties' briefing, including the latest brief, the Reply Brief of Mr. Hargrove filed on January 16, 2018. They are familiar with the issues and the arguments presented by both parties and will not unduly repeat arguments already made therein.

### IV. ISSUES ADDRESS BY AMICUS

If granted permission, WDA's *Amicus* brief will provide historical information and context surrounding the structure, funding and oversight of indigent defense services in Grant County at the time of Mr. Hargrove's trial, which will aid the Court in considering his claims of ineffective assistance of counsel. WDA will also explain and provide an overview of events leading to subsequent indigent defense reforms in Grant County, including the claims raised in the class action lawsuit, *Best v. Grant County*. WDA will provide information on the safeguards resulting from the sweeping changes to the way Grant County provides for indigent defense services following settlement of the lawsuit, and why those reforms matter when considering ineffective assistance of counsel.

WDA will provide the Court with information about the obligations of defense counsel to investigate and prepare for trial, and what conscientious, ardent and quality representation requires.

#### V. NEED FOR ADDITIONAL ARGUMENT

The issues in this petition are of substantial constitutional significance and public importance. *Amicus* attorneys' experience and familiarity with the issues presented in this case allow them to provide additional perspective and authority that will be of use to this Court in deciding whether Mr. Hargrove received effective and constitutionally adequate assistance of counsel in 1998 in Grant County. This brief is necessary to ensure that this Court has a full picture of the legal and practical background in which this decision is made.

#### VI. CONCLUSION

For these reasons set forth, WDA respectfully requests that the Court grant it leave to file an *Amicus* brief in this matter.

Respectfully submitted this 15 day of February, 2018.



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