

***State v. A.N.J.*: Strengthening the Standards for Public Defense**

In *State v. A.N.J.*, 168 Wn.2d 91 (2010), the Washington Supreme Court took the opportunity to directly confront some of the most persistent problems in our public defense system. The Court charged that the guarantee of effective representation is often rendered an illusory promise to indigent defendants because of structural problems such as inadequate funding, high caseloads and flawed contracting for defense services.

The juvenile in this case sought to withdraw his guilty plea for child molestation because his attorney failed to consult with him, and even provided misinformation, about the nature of the charges and the consequences of pleading guilty. In addition, the attorney failed to investigate the case. He did not contact exculpatory witnesses, and he performed no appreciable work. Under these circumstances, the attorney could not evaluate the state's evidence against his client, and as a result, could not provide meaningful assistance to his client in deciding whether to plead guilty.

The Court held that the attorney's deficient performance was ineffective and allowed the juvenile to withdraw his plea. The Court, however, did not narrowly focus on the attorney's performance in this isolated case. Instead, The Court acknowledged the flaws of such a contract system and set out some general professional performance benchmarks beyond merely what would satisfy the bare minimum standards. Specifically, the Court articulated the following standards:

- **Duty to Investigate**: Counsel maintains a duty to investigate the facts in order to assist a client in making an informed decision about a plea agreement, even when the client is prepared to confess to a crime. Investigative costs should not be paid out of a public defender's own fees because such arrangement creates a financial disincentive for the attorney to do any investigation.
- **Duty to Form a Confidential Relationship with Client**: Counsel's failure to consult with a juvenile client outside the presence of his parents can be evidence of ineffective assistance in determining whether the juvenile has made his own decision to enter a plea or has simply deferred to his parent's wishes.
- **Duty to Know the Law**: Counsel cannot mislead his client into erroneously believing that a sex offender conviction could be removed from the juvenile's permanent record.
- **Client Communication**: While not an express holding in the case, the Court made several references to the attorney's general lack of time he spent on this case due to his overburdened caseload and contractual disincentives. The Court linked this inattention to the specific deficiencies of performance and the client's inability to enter a valid plea.

A.N.J. marks a significant progression in the Court's willingness to address some of the systematic problems in the public defense system and to broaden its conception of what effective assistance means in criminal defense representation.