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SCARLETT A. WILSON

Solicitor, Ninth Judicial Circuit

December 22, 2021

The Honorable Deadra L. Jefferson
Administrative Judge
100 Broad Street
Charleston, South Carolina 29401

RE: Communication

Dear Judge Jefferson,

The communication with us has to improve. Both the Chief Public Defender and I have requested several meetings with you. I also have presented questions regarding the docket and policy with no response from you or your office. Rest assured, I recognize that you did not create the docketing woes we face. You inherited a broken system. While the pandemic exacerbated the Court's backlog in the Ninth Circuit, we were in crisis well before anyone heard of Covid 19 and well before you began your tenure as Chief Administrative Judge. For our part, we have taken several actions to help ease the docket pain without compromising public safety. Together with you and the defense bar, we can do more. We understand that you control the docket and I have never opposed court control. (In fact, the idea of a pilot program to create a new docketing system to bring *Langford* to life began with me.)

Docket management cannot have a singular, narrow focus on cases. It must also manage the *people* involved. Specifically, docket management must have inherent safety valves so that the few people who are critical to helping the docket operate efficiently are not mistreated in the process. Docket management must take resource allocation into account. An efficient docket begins with collaboration amongst the primary players. Despite my efforts, this is missing in the Ninth Circuit.

Since July, I have asked about rollover dates for cases not reached and have received no response. Last Wednesday, I heard through the legal grapevine that you no longer will honor your commitment to date certain cases (set for the next six months in coordination with the defense bar). In order for date certains or priority cases to have any value, the parties must know the planned dates well in advance of the published docket.

You also announced on a recent WebEx session that "everyone" should be ready for their cases to rollover. There was no explanation or framework for how cases should rollover and no guidance as to how we are to issue subpoenas in perpetuity. This is a continued problem. We simply do not have the resources to constantly serve and re-serve subpoenas. Furthermore, an open-ended subpoena will not survive the scrutiny of an appeal from a mistrial due to a State's

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non-cooperative witness. Nor will open-ended notice from the Court suffice for defendants. We both are obligated to consider precedent that requires defendants to have proper notice of the *specific* term of court in which their case will be tried. It is unacceptable for defendants (and victims via the Victim's Bill of Rights), only to have notice that their cases have been designated as trials and that they will be tried at some point in the future. While our Courts have ruled that proper notice does not require a specific trial date, it is clear that proper notice must include a specific term of court.

I have asked you for information regarding the thousands of defendants with whom the Court has not had contact. I have received no information. We are trying to take steps to address this on our end and would like to discuss what we have planned.

On December 6, I received an email from the Clerk's Office that the December 13 trials were continued. There was no explanation. Despite my inquiry to you, I have yet to receive an explanation. Having prosecutors unable to explain to victims, witnesses and the public why criminal cases are not moving forward undermines our entire system. My attorneys having no explanations for those who have already suffered so much puts everyone in an untenable position. Citizens find it incredible that the prosecutors, the representatives of the State, are not in the docketing loop. Our being in the dark on so many issues breeds suspicion and mistrust.

Judge Jefferson, I have the utmost respect for you both personally and professionally. Whether or not you reciprocate, the fact remains that I am the elected Solicitor and function in a co-equal branch of government. While there is no question you control the docket, as an elected official, I am tasked with marshalling taxpayer resources. Likewise, as an "elected," it is incumbent upon me to give the public information and answers regarding the status of cases. The lack of communication and direction is making it impossible to keep our public informed. Not having proper guidance is leading to squandered resources. This chronic situation is impacting the morale in my office and the criminal bar as a whole.

If operations do not improve, the Court's docket will continue to swell. It is my obligation as the elected Solicitor to raise these concerns with you and to ensure that you are on notice of the issues that are brewing. It is incumbent upon me to spotlight the problems I see. There are simple solutions to many of these problems and I remain eager to work with you to reduce the Court's backlog. We simply must have consistent communication. Please let me know if you are willing to meet to discuss ways to improve criminal justice in the Ninth Judicial Circuit. Time is of the essence.

Respectfully yours,



Scarlett A. Wilson
Ninth Circuit Solicitor

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