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October 28, 2011

Washington State Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

re: Proposed Standards for Indigent Defense Services

Dear Justices,

We are the principal misdemeanor prosecutor and public defender for the City of Walla Walla. The City of Walla Walla prosecutes misdemeanors through the office of its City Attorney. It provides indigent defense services through a contract with the law firm of McAdams, Ponti, Wernette & Van Dorn, P.S. We are writing to provide comment upon the Standards for Indigent Defense proposed in 171 Official Advance Sheets of the Washington Reports, No. 10, pp. Proposed 1 - 13.

We have concerns about the inclusion of caseload limits and limitations on private practices of attorneys who provide public defense representation. We submit that experienced attorneys who take seriously their ethical obligations are in the best position to determine their workloads, and that the law already provides remedy to criminal defendants whose lawyers fail to responsibly represent them. We don't believe that headline grabbing abuses perpetrated by unethical attorneys necessitate treating all attorneys as though they are incapable of managing their caseloads. We believe that attorney qualifications are an appropriate subject for indigent defense standards, but that workloads and caseload limits should be left to attorneys to determine based on their own individual training and experience. To the extent that further oversight or control is necessary, we feel that it should be considered and determined at the local level, because all jurisdictions are different, and what might be appropriate for King County may not be what is needed in Walla Walla County. We are writing primarily however to ask that the Supreme Court reconsider the manner in which the proposed standards have been submitted for comment.

This Court amended court rules CrR 3.1, JuCr 9.2, and CrRLJ 3.1 in 2010. CrRLJ 3.1 was amended to add CrRLJ (d)(4) to read:

Before appointing a lawyer for an indigent person, or at the first appearance of the lawyer in the case, the court shall require the lawyer to certify to the court that he or

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she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court.

169 Wn.2d 1145 (2010). It is our understanding that implementation of the certification requirement was delayed pending the Court's adoption of Standards for Indigent Defense Services. The Washington State Bar Association adopted "Standards for Indigent Defense Services" on September 27, 2007. However, this Court acknowledged as recently as last year that it had not adopted standards when holding that it would consider the Washington Defender Association *Standards for Public Defense Services* and the bar association's standards when considering ineffective assistance of counsel claims. *State v. A.N.J.*, 168 Wn.2d 91, 109-10, 225 P.3d 956 (2010). We are unaware of any prior adoption of Standards for Indigent Defense Services by the Court or opportunities to provide comments directly to the Court upon such standards. We are concerned, because Bar members are currently invited to comment on only a portion of the proposed standards, and we are aware that additional revisions have already been forwarded to the Court by the Washington State Bar Association Board of Governors which bear directly upon the partial standards that are presently open for comment.

Proposed Standard 3.4 states that caseload limits for misdemeanor cases are reserved. 171 Official Advance Sheets of the Washington Reports, No. 10, p. Proposed-3. However, we are aware that the Board of Governors separately forwarded proposed misdemeanor caseload limits to the Court on September 22, 2011. We feel that members of the Bar should be afforded an opportunity to see and comment on the complete package of proposed standards and that they should not be considered or adopted piecemeal.

For example, proposed Standard 3.3 defines a "case" for purposes of caseload limits as "the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation." 171 Official Advance Sheets of the Washington Reports, No. 10, p. Proposed-3. The definition may appear straightforward, but it is pretty open-ended and not entirely clear. The proposed misdemeanor caseload limits forwarded to the Court on September 22 contain case weighting provisions which indicate that the following types of matters are considered cases: (1) partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, (2) cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions, representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges, (3) cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or

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therapeutic court, and (4) cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). We recognize that the revisions forwarded on September 22 provide a method to weight such "cases" downward; however, our concern is that a practitioner reading the current proposal published in volume 171 of the Official Advance Sheets might not realize that such matters are each considered a separate "case" for purposes of the standards currently under consideration.

Most, if not all, of the cases in which sentences were imposed in Walla Walla District Court during the years in which we have opposed each other have involved a suspension of all or part of imprisonment on certain conditions. Show cause hearings regarding compliance with those conditions are very common. Most of those hearings consist of a status update and conclude with the Court giving the defendant additional time to comply with the conditions of suspension. It appears from the proposed misdemeanor caseload limits forwarded to the Court on September 22 that such show cause proceedings may count as separate "cases" from their original case filings. That is contrary to our experience and common understanding. We do not agree that routine show cause hearings in misdemeanor criminal cases should necessarily count as a separate "case," or even a weighted portion of a separate "case," but our principal concern for purposes of this comment letter is that someone reading only the current proposal published in volume 171 of the Official Advance Sheets would not reasonably conceive that such proceedings constitute separate cases, or portions of cases, unless the reader was intimately familiar with the proposed revisions which are forthcoming. We believe that the forthcoming proposed revisions to the Standards for Indigent Defense Services currently open for comment are so intertwined with them that they should be considered together. We submit that the deficiencies in the proposed definition of a "case," published at 171 Official Advance Sheets of the Washington Reports, No. 10, p. Proposed-3, do not become fully apparent until that definition is considered in context with the list of things that are considered to be a "case" in the proposed misdemeanor caseload limits forwarded to the Court on September 22.

The definition of a "case" under the Standards for Indigent Defense Services is a matter of much importance, because it will not only limit the indigent defense work that an attorney may accept under proposed Standard 3.4. It will also limit an attorney's private practice under proposed Standard 13. It is our belief that many who read only the part of the Standards for Indigent Defense Services currently open for comment will not fully appreciate the full impact of the complete proposal, and may not comment on something as seemingly innocuous as the definition of a "case" until after that definition has already been adopted and its deficiencies later appear.

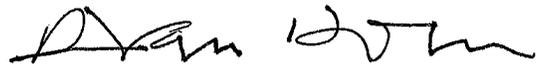
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We are hopeful that the Court will resubmit the complete proposal for Standards for Indigent Defense Services for comment as a package. We have additional concerns about the proposal that was forwarded to the Court by the Board of Governors on September 22, but we will reserve further discussion until that proposal is officially open for comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Donaldson". The signature is fluid and cursive, with a large initial "T" and "D".

TIM DONALDSON  
Walla Walla City Attorney

A handwritten signature in black ink, appearing to read "Robert Van Dorn". The signature is cursive and somewhat stylized, with a large initial "R".

ROBERT VAN DORN  
McAdams, Ponti, Wernette & Van  
Dorn, P.S.