

September 12, 2024

Larry Jefferson  
**via email**

**Re: Funding to Address Implementation of WSBA Standards**

Dear Larry:

I write to repeat my request that OPD seek funding in both its supplemental budget request and biennial request to fund implementation of the recently adopted WSBA Standards reducing the permissible appellate defense caseload from 36 to 25 cases per year. That 30% reduction in cases will require an approximate 45% increase in OPP's budget for appellate contractors.

The current state of appellate public defense in Washington is largely attributable to the historical actions, or inaction of, OPD. It was OPD which in 2007 advocated for a significant increase in the caseload standard. It was OPD which for years provided little to no increase in contractor compensation. Despite being told "Not now, we'll get to you later" time and again appellate defenders persisted in their work for clients. You have made clear you want to fix that, to improve both appellate defense and public defense in total. You said today you do not want to take advantage of the dedication of people like me as justification for denying the support and resources we need to serve our clients. If that is the case, you cannot say "not now, we'll get to you later."

At your request the Council on Public Defense created a subcommittee to examine and recommend changes to appellate caseload standards. That subcommittee submitted its proposed amendment to the WSBA Standards for Indigent Defense to the Board of Governors. The Board of Governors adopted the two-part proposal (1) the workload study; and (2) an interim reduction of caseloads. While OPD is funding the workload standard it is not seeking funding of the remaining portion of the amendment. These were not alternatives. The interim standard was intended to provide immediate relief while the workload study progresses. It was intended to alleviate the crisis of "unreasonable" appellate caseloads that led you to ask the Council on Public Defense to act in the first place. And because it was intended to apply immediately, there is no graduated implementation schedule. While the trial standards do not change until July 2025, the appellate standards changed last Saturday.

You have described being on the “precipice” of a caseload crises. Yet OPD’s budget plan does not contemplate doing anything to alleviate that caseload crisis until 2028 at the earliest. I am committed to work with OPD in the near term to implement the standards while available funding may be limited. But, OPD’s refusal to even ask for the funding needed to implement the standards in the next fiscal year is, in a word, insulting.

It is insulting to the attorneys doing this work under the strain of caseloads you described as “unreasonable.” It is insulting to them that you recognized the crisis, called for action, and then refuse to employ the tools you asked for to address it. Is insulting to appellate defenders to again be told “not now, we’ll get to you later.”

At its inception OPD had the singular function of overseeing competent and constitutionally adequate appellate public defense. While additional practice areas have since become a part of OPD’s portfolio, appellate public defense remains the sole practice area which is both constitutionally mandated and solely OPD’s obligation to fund. It is confounding that OPD intends to seek tens of millions of dollars in the next biennial budget to fund trial defenders, yet does not intend to seek a penny to implement appellate caseload standards.

I recognize the difficult budget decisions you have to make. But as you work so hard to improve the house that is Public Defense, I ask that you look first at the rooms you already occupy. How will counties and cities respond to the mandates that they decrease caseloads for their public defenders, when OPD is refusing to do just that for the appellate defenders you fund?

We need additional funding in the both the supplemental and biennial budget in order to comply the WSBA Standards and our Contract.

Our contract makes clear my office and attorneys must comply with the WSBA Standards **in addition to** the Supreme Court Standards

**4. STANDARDS: CONTRACTOR** shall provide representation in compliance with the Rules of Appellate Procedure, the Rules of Professional Conduct (RPC), the applicable Washington State Bar Association (WSBA) standards, and the Supreme Court Standards for Indigent Defense.

There is no room in that language to allow us to ignore the existing standard. There is no room in that language to suggest the WSBA Standards have no force on our representation unless adopted in court rule. And, of course, OPD signed that contract as well mandating that it ensure we do comply with the WSBA standards.

Contract language aside, the WSBA standards themselves mandate our compliance.

In addition to compliance with both the WSBA and Court Rule Standards, public defense attorneys must comply with the Washington Rules of Professional Conduct (ethical requirements) and be familiar with and consider Performance Guidelines adopted by the WSBA and others for specific practice areas (adult criminal, juvenile court offender, family defense, civil commitment, and appeals).

WSBA Standards on Indigent Defense, p.2 (2024). Again, we must comply with both WSBA standards and Court Rule Standards.

Once again, unlike the trial standards, the appellate standards do not have a delayed implementation timeline, they are the standard now.

An ethical standard crafted by the body tasked with lawyer discipline cannot simply be dismissed as advisory or aspirational. I certainly doubt our insurance provider would agree with such a cabined reading should we face a malpractice suit. Moreover, we know the Supreme Court will not view them as such. In *A.N.J.* the Court made clear an attorney's failure to comply with the WSBA Standards was relevant to a determination of ineffective assistance of counsel even if it found they were not determinative of IAC on their own. Importantly, *A.N.J.* relied on the standards well before any rule was adopted.

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Supplemental funding is necessary to permit OPD contractors to perform under the contract, to meet the ethical standard, and to satisfy their constitutional obligations. I am committed to working with OPD to achieve this.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gregory C. Link". The signature is fluid and cursive, with the first name "Gregory" being the most prominent part.

Gregory C. Link, Director  
Attorney At Law