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

RE: Comments and concerns with proposed standards for Indigent Defense Services

Dear Supreme Court Justices:

Our primary concern is that case load limits set forth in the proposed standards fail to take into consideration the experience of counsel and differences in the practice of counsel in different courts. The standards assume that all courts operate like the King County District Court where courts of limited jurisdiction are, for the most part, used by both the prosecutor's office and the public defender's office as the baseball equivalent of the minor leagues. A new attorney comes in and gets a year or two of experience and then moves on to the Superior Court.

The only requirement to practice misdemeanor defense under the proposed rule is that the attorney has satisfied "the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court, " and is familiar with the legal issues associated with the practice of criminal defense. Assuming this lack of anticipated experience, the limitation on cases as proposed may or may not make sense. However, at the municipal court level in many of our jurisdictions we have attorneys with upwards of ten and twenty years of experience who have dedicated their careers to representing indigent defendants accused of misdemeanors. Under the rules, these attorneys would be limited to the same case load as an attorney right out of law school, with no recognition for the value of their experience.

In every other level of case, from Class C felonies to Death Penalty Cases, the proposed standards take experience into account. If experience matters to an individual facing zero to sixty days on a first offense Theft in the Second Degree, it should matter to our clients as well. As the proponents of the standard point out, misdemeanors are important. They can impact a client's life in a variety of ways including liberty, livelihood, immigration status, driving privileges, gun rights, educational benefits, and result in travel restrictions. For the same reason experience matters in a Class A felony, it should matter and be taken into consideration for a misdemeanor defendant. Experienced lawyers can and do get better results than inexperienced ones. They are also capable of representing a significantly higher number of cases than inexperienced attorneys.

The standards also assume that every city operates under a model where a defendant is assigned to a particular public defender that stays on the case throughout its duration. However, in some jurisdictions, it is to the client's benefit to be represented by the firm as a whole, rather than a specific individual who may not be the best person in the firm to handle the case as it unfolds. For instance, in every office there are going to be some attorneys who are going to be more effective when it comes to taking a case to trial. This credible threat of an experienced trial attorney taking a case to trial gives the accused the best chance at a good plea bargain if they are interested in resolving their case short of trial, and a better chance of acquittal if they elect to go to trial. The proposed standard

does not appear to provide a mechanism for cases to be shifted to more qualified attorneys when the situation requires.

Significantly, the vast majority of the proposed standards amount to little more than unenforceable recommendations to our municipalities. For instance, Standard One provides that "[p]ublic defense attorneys **should** be compensated at a rate commensurate with their training and experience . . . " that "compensation **should** be comparable to those attorneys and staff in prosecutorial offices" and that assigned counsel "**should** be compensated for out-of-pocket expenses." [Emphasis supplied.] The proposed standards do not take into account the very real possibility that in these tough economic times the cities and small counties do not have the resources to pay their public defenders what they **should**. The most likely result of this rule will not be more attorneys to handle the same number of cases, but a shift in the filing standards away from less serious and less complicated crimes, resulting in attorneys having the same case loads they are currently handling, but with a more complex case load based on changes in filing standards, and a situation where the attorney has less time to spend on the serious cases, not more. Alternatively, given that the most that the standard provides for is what the cities and **should** pay their public defenders, they may simply elect to replace their current experienced attorneys with less expensive, less qualified attorneys just out of law school.

The proponents of the caseload limits would have the court believe that the system is broken. While it is true that there are a number of isolated incidents were very poor representation has been provided, for the most part the persons providing indigent misdemeanor public defense are well-qualified attorneys providing excellent representation to their clients. It was a private, for profit public defender who developed the argument in *Redmond v. Moore* resulting in defenses for thousands of persons charged with driving with license suspended charges. It was a private, for profit public defense firm who developed the argument that the previous version of the No Contact Order Violation statute did not cover consensual non-threatening violations that occurred outside the residence, workplace or school, resulting in a large number of cases being dismissed or not filed until the legislature changed the statute. It was a private for profit public defender who came up with the argument that a defendant charged with Violation of the Ignition Interlock statute could defeat the charges if they had never had a new license issued after the requirement was put into place, again resulting in legislation re-writing the statute.

Experienced, well qualified private public defense firms have been busy successfully defending their indigent clients, arguing motions, negotiating good plea dispositions and more often than not winning jury trials. The proposed rule jeopardizes the great work that many of us have done by reducing all of us to the lowest common denominator.

The standards also fail to take into consideration the reality that a significant percentage of misdemeanor defense clients view the process as part of their punishment. These clients do not want the level of representation that is contemplated by the case load limits. A client charged with Theft in the Third Degree, with a post Miranda admission and an offer of a deferred sentence at his arraignment may insist on pleading guilty, especially under circumstances where future court dates are likely to result in the loss of a new job. The married man charged with patronizing a prostitute who simply wants the

quickest, quietest, resolution possible, or the client who is in custody having failed to appear at multiple court dates and insists on pleading guilty at his first appearance as a means of getting out of jail. Appointed counsel can make his or her best effort to convince each of these clients to aggressively challenge the prosecution, but in the end it is the client who elects to plead guilty early on in the process, and the rule counts each of these defendants the same as it counts those who take their cases to trial.

Nor does the rule recognize the frequent occurrence in courts of limited jurisdiction where the judge appoints counsel for the limited purpose of a single hearing. This might be an arraignment where the defendant anticipates hiring private counsel, or a simple review hearings where the court wants to close the file with no additional consequence to the defendant. The hearing might occur in custody, at a time where private counsel is not available and, again, all that the indigent defendant wants is to get out of jail. Assuming a public defender is appointed for this relatively basic hearing, this appears to count as "case" as contemplated by the proposed standard.

Thank you for your consideration,

Andrea Beall
Jeff MacNichols
Ken Harmell
Supervising Attorneys for the law firm providing public defense services to cities including Kent, Lakewood, Seatac and Sammamish

Jim Schlotzhauer
Supervising Attorney for law firm providing public defense services for the cities of Shoreline and Lake Forest Park

Diane Zumwalt
Supervising Attorney for the law firm providing public defense services for the city of Federal Way

Tim Goss
Supervising Attorney for the law firm providing public defense services to cities including Burien and Tukwila

Tricia Grove
Supervising Attorney for the law firm providing public defense services for the city of Renton