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SUPREME COURT  
STATE OF WASHINGTON  
Oct 25, 2011, 4:27 pm  
BY RONALD R. CARPENTER  
CLERK

October 24, 2011

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

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

Dear Supreme Court Justices:

We are writing to get on the record our strong concerns with the proposed standards for Indigent Defense Services that have been forwarded to you by a Washington State Bar Association Council on Public Defense (CPD). Specifically, we want to register strong objections with proposed amendments to Standard 3.4 regarding numerical caseload limits for misdemeanor indigent defense work.

The caseload limits to which we refer would limit misdemeanor cases for public defenders to 300 per attorney per year – or in jurisdictions adopting a “case weighting system” described in the standard, 400 per attorney per year. Because this standard would have the effect of dictating to local jurisdictions how they run their indigent defense operations, how they structure their systems, and what costs they incur (*with significant budget implications*), it would have the effect of taking on legislative direction. This is the purview of the Legislature, and not an appropriate function for the Supreme Court to take on via rule-making.

Additionally, we believe there are a series of reasons why a standard that is based on numbers, and blind to a wide array of policy and practical issues, makes very little sense and could in fact be very damaging to the indigent defense operations of local jurisdictions:

- This standard does not take into account in any way the experience of those providing public defense. Attorneys and firms with a greater level of experience and expertise will be able to file and process cases more efficiently than those absent the experience.
- This standard does not take into account the level of complexity of many misdemeanor cases. In contrast with felony-level cases that often include a much more intense level of work, preparation, etc., many of the misdemeanor-level cases that public defenders deal with are much more straightforward in nature and thus can be processed more expeditiously.
- This standard does not look at what technology public defenders and indigent defense firms have at their disposal. This technology often allows such firms to deal with cases, and the processing of cases, much more efficiently and effectively than in prior eras before the advent of time-saving devices such as laptop computers, I-Pads, and tablets.
- This standard could have the effect of delaying charging decisions, and thus may have a detrimental impact on public safety. In order to live within a rigid numerical standard, some jurisdictions may be forced delay charging certain cases that they almost certainly would and should charge timely under

normal conditions. The delay would be caused by the necessity to identify and contract with another public defense entity to handle cases which would exceed the caseload of its primary public defense agency. Employing an additional public defender would result in the expenditure of additional public funds.

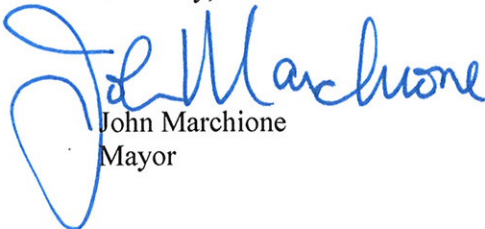
- This standard could have the “unintended consequence” of putting less experienced public defenders onto cases. There could be jurisdictions that, when faced with the numerical standards of 3.4, decide they will need to hire the least experienced and least qualified public defenders possible as a way to stay within budgets.
- Also importantly, this standard could have significant cost and budget implications for already financially-strapped local jurisdictions – and it thus would dictate resource allocations to local governments, something that is, again, the purview of the Legislature, not the courts. The City of Redmond has contracted with the same public defense firm for many years. Defendants represented by that firm have received effective, competent representation without state mandated caseload standards. If such standards are implemented the possibility arises that that firm would have to hire additional attorneys to comply with caseload requirements or the City would have to hire a second public defense provider. Either alternative would involve the expenditure of additional public funds. The City does not want to be placed in a position to make such a choice by the establishment of caseload standards.
- Finally, we are not aware of any other practice area where there is a numerical limit on the amount of business in which an attorney can engage. Instead, as with other professions, we grant each practitioner discretion and personal leeway as to the number of hours and cases he/she deals with.

We are also bothered by a number of “process” issues related to the development of this standard. We are wondering why a Court Rules Committee never considered this standard. We also would note that the CPD did not include any representative of the many firms which provide indigent defense services to municipalities around the state. Additionally, it appears that municipalities were not included as voting members or genuine participants in the CPD, which makes little sense given the expectations on them to carry out and implement the proposed standards.

In summary, we would urge you not to adopt this misdemeanor indigent defense services standard as proposed – and, in particular, to eliminate blind numerical limits that will create many more problems than they will solve. We believe these standards were triggered by a few isolated situations and would have the unfortunate result of targeting the many, many jurisdictions which are doing a very good and professional job of ensuring high-quality, effective, and efficient indigent defense services. Perhaps if we can restructure any standards to target the few instances where good work is not being done, rather than the vast majority of jurisdictions doing the right thing, we might be better-served.

Thank you in advance for your consideration of our concerns.

Sincerely,



John Marchione  
Mayor