Washington Association of
Criminal Defense Lawyers

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

RE: Standards Proposed Pursuant to CrR 3.1, CrRLJ 3.1, and JuCR 9.2

Dear Supreme Court Justices:

On behalf of the Washington Association of Criminal Defense Lawyers (WACDL), I write to you in support of the standards proposed pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2. The adoption of the proposed standards and performance guidelines would be significant step forward in ensuring quality representation for indigent defendants. It is clear that a great deal of work and thought has gone into drafting both the standards and the guidelines. The result is an enforceable set of standards which will guide not only public defenders but all criminal defense attorneys and will provide the courts, and the bar, with a benchmark applicable to all aspects of criminal defense.

Caseload standards are not new. The first broad-based effort to establish caseload standards was by the National Advisory Commission on Criminal Justice Standards and Goals (NAC) in 1973. The NAC report stated, in Standard 13.12:

> The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health act cases per attorney per year: not more that 200; and appeals per attorney per year: not more than 25.

Keeping Defender Workloads Manageable, U.S. Department of Justice, 2001, p. 8, citing National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Court, 1973, p. 186.

These 40-year old standards have remained remarkably resilient. Keeping Defender Workloads Manageable, U.S. Department of Justice, 2001, p. 8. The standards formed the basis of the Washington Defender Association's standards as well as the caseload standards adopted by the Washington State Bar Association.

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In light of this long history of and experience with caseload standards the Court should enact the proposed mandatory standards.

Despite this history, there is still opposition to the proposed standards. However, the issue is not the standards themselves but the mandatory and enforceable nature of the standards. It is telling that the current WSBA standards for indigent defense have not been followed. The failure of some attorneys or public defense offices to follow the WSBA standards makes it clear that voluntary guidelines do not provide the necessary protections for indigent defendants. Many public defenders still carry excessive caseloads. The economic considerations of some public defense offices prompts them to take more cases then they can reasonable handle. Mandatory, enforceable limits are necessary to curb excessive caseloads and to protect indigent citizens who have no other recourse to counsel.

It would not be effective to simply require individual attorneys to certify that they are providing effective assistance of counsel, taking into account the nature and number of their open cases, as proposed by the Washington Association of Cities and the Washington State Association of Municipal Attorneys. Few attorneys ever *knowingly* provide ineffective assistance of counsel.

In order to ensure that indigent defendants receive quality representation, more is needed than an attorney's belief that he or she is providing effective assistance of counsel. Clearly that was the view of the Supreme Court in enacting the court rule and asking for the development of standards. While the Supreme Court has not indicated what the caseload standards should be, the Court has referenced the WSBA standards and the WDA standards approvingly. See St. v. A. N. J., 168 Wash.2d 91, 225 P.3d 956 (2010).

The greater concern is the contention that an attorney, experienced or otherwise, can handle more than the authorized number of cases. The goal, however, is not to handle as many cases as possible. The goal is to handle all of the cases competently. Almost 40 years of experience with caseload limits has shown that the most effective way to ensure that is to limit the number of felony cases to 150 and misdemeanor cases to 300-400. The case load limits will allow a skilled attorney to make use of that skill and provide quality representation. An increase in the caseload limits for particularly skilled attorneys does not take advantage of their skill, it dilutes it.

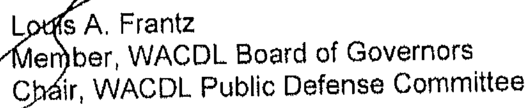
Additionally the claim was that a skilled attorney can handle far more cases than the standards allow and that advances in technology allow an attorney to practice more efficiently misses the point of the standards and ignores the reality of a current criminal defense practice. Many misdemeanors have significant consequences beyond the mere fact of conviction. Misdemeanor convictions can have immigration consequences and Padilla and Sandoval require defense counsel to have at least a working knowledge of immigration consequences. Additionally, misdemeanor convictions can impact housing and firearm rights, can result in sex offender registration and can serve as elements for felony offenses, e.g., felony violation of a no contact order, felony DUI and unlawful possession of a firearm. Increasingly, misdemeanor convictions are considered in determining a felony defendant's offender score, resulting in increased confinement. Finally, DUIs can be some of the most complex cases to try.

While advances in technology have increased efficiencies in certain aspects of the practice, the advances have not so significantly altered the practice of law. Preparation of pleadings and research may be done quicker, but there is much more involved in a case than those technical aspects. There is no substitute for an in-depth discussion with a client.

It is true that in this era of limited criminal justice resources, we cannot ignore the possibility of increased costs to the local governments. But increased cost of counsel must be weighted against the provision of inadequate legal representation for indigents. And, there are costs to the system when defense counsel has an unmanageable caseload: cases are continued, convictions reversed and defendants seek to discharge one lawyer for another. The result is an unreliable and ineffective criminal justice system.

On behalf of WACDL, I encourage the Court to adopt the proposed amendments. Thank you for your time and consideration.

Sincerely,



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