From:	OFFICE RECEPTIONIST, CLERK
To:	Martinez, Jacquelynn
Subject:	Fw: Comments on Suggested Amendments to Standards for Indigent Defense Services Revised CrR 3.1 Stds/CrRLJ 3.1 Stds/JuCR 9.2 Stds
Date:	Monday, October 14, 2024 8:18:21 AM

From: Bill Schrader <bspenceschrader@gmail.com>
Sent: Sunday, October 13, 2024 2:33 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on Suggested Amendments to Standards for Indigent Defense Services Revised CrR 3.1 Stds/CrRLJ 3.1 Stds/JuCR 9.2 Stds

Washington State Supreme Court
Temple of Justice
415 12th Ave SW
Olympia, WA 98501
Re: Comments on Suggested Amendments to Standards for Indigent Defense Services Revised CrR 3.1 Stds/CrRLJ 3.1 Stds/JuCR 9.2 Stds

Justices of the Court:

I am writing to comment on the proposed public defense standards. My name is Bill Schrader, and I am a public defender representing individuals facing criminal prosecution in King County. However, I write this comment in my personal capacity, and these opinions are in no way a representation of my employer's views. I have also worked as a public defense attorney in rural New Mexico, and during law school, I was honored to work at the Thurston County Prosecuting Attorney's Office, where a significant portion of my work involved prosecuting domestic violence cases. I am also a father and husband. It is very clear, and a consensus among my colleagues, that it is nearly impossible for the roles of parent and public defender to coexist. This is unacceptable.

I am a Class-A qualified attorney, deeply devoted to this work. However, to protect my health, my family, and my moral compass, I will not continue to operate under these conditions. This Honorable Court admitted me to the bar based on my promise to uphold my ethical obligations as an attorney, which, in criminal defense, means providing "undivided allegiance and faithful, devoted service" to individuals accused of crimes, regardless of the allegations. *Von Moltke v. Gillies*, 332 U.S. 708, 725-26 (1948). I cannot see how I can sustain this devotion under the current workload.

I am writing to express my support for the proposed public defense standards and to raise concerns about the untenable alternatives proposed by others. The Court should reject any compromises to these standards. Comments from the judiciary have suggested the formation of a task force, which notably excludes the most crucial stakeholder—the accused—and proposes additional time and research to determine solutions. This omission is troubling. Either the accused were not important enough to have a voice, or they were not even

considered. No more research is needed; the solution is apparent: public defenders have too many cases.

These standards were proposed by a 12-1 vote of the multidisciplinary WSBA Board of Governors, upon the recommendation of the WSBA's Council on Indigent Defense. This council consists of a diverse team, including prosecutors, defense counsel (both private and public), big law attorneys, law professors, civil attorneys, and judges. The council recommended these standards based on a study conducted by legal academics. There is no need to form an additional task force—this issue has been thoroughly investigated, and it is widely recognized that the current system is unsustainable.

The proposed standards recommend a 70% reduction in caseloads, and I believe this figure is correct. At present, I handle at least 47 case credits for violent offenses alone. Questions were raised at the Board of Governors' meeting about whether public defenders are already violating their ethical obligations due to these caseloads. My answer is no; however, my colleagues and I make significant personal sacrifices to fulfill our professional obligations and ensure that our clients' constitutional rights are upheld. Currently, our office has lost four Class-A attorneys in the last two months, and we expect to lose two more soon. I am working approximately 60 hours a week, with 12-hour days being common, and this workload appears to be consistent across my colleagues in public defense. Based on the RAND recommendation that we spend 35 hours on average per case, my caseload of approximately 80 cases would require me to work 53.8 hours per week without taking vacations, breaks, or medical leave. This corroborates the necessity of the 60-hour workweeks my colleagues and I are experiencing—when accounting for the small amount of time I am able to take off for family emergencies and necessary leave.

I became Class-A qualified in only two years, and I am grateful for the work I have done, but this is not sustainable. Since March, I have tried four strike offenses. In the next two months, I am set for trial on four cases, three of which are strikes, comprising seven felonies and two misdemeanors. The State has alleged aggravating circumstances in three of these cases. I am also preparing for three contested sentencings where the State is seeking the maximum range or an aggravated sentence. In addition, I have received 10 new cases in the last three weeks, all requiring significant attention and preparation. Recently, the State disclosed approximately fifteen hours of discovery, which, upon review, contained 100% irrelevant information. Moreover, the State routinely names witnesses whom they appear to have no actual intention of calling. For example, in my last trial, the witness list contained 22 people, but the State only called 11. It is common to meet with officers summoned by the State who are unclear as to why they were named as witnesses because they were only a backing officer or traffic control at the scene and know nothing about the defendant or crime. In one case, I received over 6,000 pages of digital material. I have a case so voluminous that the discovery was placed onto a specially purchased external hard drive because my computer could not store all the discovery. To represent my clients effectively, I must review all these materials and speak to all these witnesses to ensure that nothing is overlooked. I do not mention these facts seeking accolades or sympathy but to illustrate the scale of the issue before this Court. This situation is untenable. Public defenders work tirelessly until they simply cannot continue and have to quit to protect their mental health and wellness.

This problem continues to compound as public defenders leave their positions, leading to issues similar to those faced by Oregon now occurring in some parts of our state, mainly in the Tri-Cities. Federal district courts and the Ninth Circuit Court of Appeals have ruled on this issue, and judges across this state are already ruling that the system is violating the Constitution. In *Betschart v. State of Oregon*, the Ninth Circuit likened Oregon's public defense crisis to something out of a "1970s-era autocratic regime in the Soviet Bloc" due to the state's inability to provide counsel for indigent defendants. *Betschart v. State of Oregon*,

103 F.4th 607, 612 (9th Cir. 2024). During the initial habeas proceedings, Federal District Court Judge Michael McShane called the situation a "tragedy" and an "embarrassment" and noted that Oregon had effectively "suspended the Constitution" for those without legal representation. Oregon had the opportunity to reform its public defense system in 2020. However, just as members of my local judiciary call for today, they chose to wait, and a complete, unmitigated disaster occurred that resulted in the release of people accused of violent offenses.

I stand for the rule of law and the United States Constitution. While representing the people of Thurston County, I successfully advocated for victims' rights under state statutes and constitutional provisions. However, none of these provisions override the Sixth Amendment of the United States Constitution. If the accused does not have effective counsel, the prosecution cannot stand. This is not a radical concept—it is binding law. Based on the information before this Court and my personal experience and knowledge, we will be there soon. In Washington State, if caseloads are not reduced, there will not be enough attorneys. We will not be able to prosecute crime. We will not be able to keep our communities safe and protect the Constitution. People will be released and reoffend before we meet our constitutional obligations and bring them to court with an attorney. Bad things will happen that could have been avoided. This is a failure of the executive and legislative branches caused by decades of ignoring the problem.

Adequate representation can coexist with the prosecution of those who violate the law. In rural New Mexico, in Otero County—a nationally notorious county for tough prosecutions—we achieved 40-hour (or close) workweeks, with overtime only approved for documented necessities, at the public defender's office, with Class-A attorneys working substantially fewer cases than they do in Washington. This allowed for significantly more co-trying and mentoring during jury trials. Such a structure fostered more robust defense strategies and professional development. It is possible to meet professional standards with a reasonable caseload—we simply are not achieving it in one of the wealthiest states in the nation.

For the benefit of all stakeholders, I urge the Court to adopt the new public defense standards proposed by the WSBA. We must correct course now to uphold the rule of law.

Sincerely,
Bill Schrader