From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Public Comment on Suggested Amendments to Standards for Indigent Defense Services
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From: Tian, Christine <ctian@kingcounty.gov>
Sent: Sunday, September 22, 2024 8:50 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Public Comment on Suggested Amendments to Standards for Indigent Defense Services

Dear Justices of the Washington State Supreme Court,

My name is Christine Tian. I have been a public defender for seven years, first in New York City and now in King County, WA. I am writing to support the proposed court rule amendments to codify the WSBA's recently passed Standards of Indigent Defense, which bring caseload standards in line with national standards and 21st-century standards of Constitutionally effective practice. I write because the public defense system in King County is at a breaking point, and *it does not have to be this way.*

My colleagues and I are proud to be public defenders. We chose this path, deliberately forgoing higher-paid opportunities in corporate law, because we believe in the Constitutional promise of "innocent unless proven guilty" and the right to a fair trial. I graduated from Harvard Law School *magna cum laude* and clerked for a federal judge before joining King County DPD. I say this not to brag or because I believe this makes me superior to others, but I have heard and read some critics of the WSBA-passed caseload standards denigrating public defenders as mediocre attorneys who couldn't land more prestigious jobs. This couldn't be farther from the truth—my background is not unusual among my talented and hardworking peers. We are not public defenders because we had no other choice. We are public defenders because we believe that no person can be reduced to the worst thing they have done, that every life has dignity and value, and that mass incarceration is not the cure for every societal ill. We are not asking for more money, more prestige, or to have an easy and relaxing job. We are simply asking for basic, humane workplace conditions where we can effectively represent our clients without working 80-hour weeks, ruining our own health, or neglecting clients and delaying trials for years because of our excessive caseloads.

Think about the work necessary to be a Constitutionally effective criminal defense attorney in this day and age. Imagine a person falsely accused of being involved in a shooting. This hypothetical client has been charged with Assault in the First Degree, and could face up to life in prison. Their attorney must review hours of surveillance and police video, conduct hours of witness interviews, analyze forensic discovery including DNA, fingerprints, toxicology/crime scene investigation, or ballistics, and consult with and hire expert witnesses. She must meet with the client regularly to review this evidence and discuss trial strategy. She must litigate pretrial motions and run a full jury trial, by herself or with one colleague, which typically takes 2-6 weeks. All this, while trying and failing to do the same for her other 60+ clients. According to the current (non-WSBA) caseload standards, which are completely archaic and rooted in standards of practice from 50 years ago, this entire case should take 13.3 hours. This is completely unreasonable and needs to change. Imagine if your surgeon was practicing using 50-year-old standards—that would be a crisis! It is no less of a crisis facing our indigent clients. They aren't on the operating table, but many of them are

innocent and falsely accused but still facing decades-long prison sentences or lifelong consequences (deportation, disqualification from their profession, eviction, losing their children). The WSBA-adopted caseload standards are not made-up. They are not aspirational. They are based on a rigorous, data-based, and objective study of public defense work in 17 states by the RAND Corporation, which studied the amount of work *that effective public defenders are actually doing.* Codifying the WSBA-passed caseload standards would simply bring our legal system in line with reality.

I have seen dozens of highly qualified felony trial attorneys driven out of the profession in the last four years. These are dedicated, brilliant, empathetic attorneys from the top law schools who have years of trial experience. *These are the people we should want to represent the public.* They want to do this work, but they cannot. Public defense in Washington is shockingly family-unfriendly. I have two small children and have to work several hours every weeknight after they're in bed and most weekends simply to keep up with my caseload, which ranges from 60 to 90 open felonies at any given time. I want to set a good example for women continuing to pursue demanding, meaningful careers after they have children. I want my kids to be proud that their mom helps the poor and the voiceless. And I completely understand that as an attorney, late nights and weekend work are sometimes unavoidable in the thick of trial or client emergencies. However, this kind of everyday workload (without the kind of remuneration typically associated with such high-hour professions) is simply unsustainable. It also leads to terrible client outcomes: out-of-custody clients may wait weeks for a phone call or meeting to review the evidence in their case; in-custody clients sit in jail for months waiting for a trial; exhausted attorneys make mistakes, don't have time to gather exculpatory evidence, and simply cannot prepare properly for trial. I am sure there are innocent people sitting in prison right now because their attorney tried their best, but it wasn't enough. We cannot, and should not, accept such a system.

It does not need to be this way. I worked as a public defender in New York City before I came to Seattle, and the difference in caseload is astonishing. The New York criminal justice system is far from perfect, but it is far more humane for both the defendants and the practitioners. In King County, WA, a typical caseload might be up to 100 felonies or 200+ misdemeanors at a time. In New York, it was no more than 40-50 felonies or 80-100 misdemeanors. We had far more career public defenders, including attorneys with small children; cases proceeded to trial far more quickly; and there was far less attrition. Newer attorneys could learn from the seasoned trial attorneys who had practiced for decades, and we did not deal with the constant turnover of trial attorneys leaving the practice and transferring their most difficult cases to inexperienced colleagues. I was quite shocked when I came to King County and learned that it was practically unheard-of for a felony attorney to stay in trial practice for more than 2-3 years at a time, due to burnout. Every time a Class A felony attorney rotates to a different division or leaves the profession altogether, it creates a cascade of delay and inefficiency, as the newer attorneys have to absorb a difficult caseload, familiarize themselves with all the evidence and legal issues, and regain the clients' trust. The turnover has led to terrible client outcomes: some of the most serious criminal cases in our system have been pending for 5+ years with 5+ changes in counsel. This system is also completely unjust to victims, as they see criminal cases drag on for years without any sense of closure, or convictions of their abusers get overturned because the trial attorney was Constitutionally ineffective.

I recognize that changing public defender caseloads will not solve all the woes of our criminal justice system. We must invest in our communities and alternatives to incarceration. I know that trial prosecutors are overworked, too; and having effective, ethical, diligent prosecutors is important to a just and safe society. However, adopting realistic public defender caseload standards as a court rule does not stop other necessary reforms. This is a necessary first step to ensure that public defenders can meet our ethical obligations to our clients, thus protecting the sacred Constitutional right to effective legal representation upheld in *Gideon v. Wainwright*.

Respectfully,
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