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October 30, 2024

Washington State Supreme Court
PO Box 40929
Olympia, WA 98504

Sent via email to: supreme@courts.wa.gov

Re: Comments to proposed changes to the Washington State Supreme Court's adopted Standards for Indigent Defense

Dear Honorable Justices:

The City of Spokane Valley values the work of public defenders and acknowledges their tireless efforts to protect the rights of the accused. While the City is sensitive to specific issues faced by jurisdictions tasked with public defense at the felony level, the City is responsible for providing public defense for misdemeanor and gross misdemeanor crimes, and this letter will focus on that area.

The standards as adopted in 2012 exist to ensure base elements of effective representation across the State. In order to adopt these proposed standards, the City believes there needs to be evidence that: a) there is a crisis in vacancies of public defender positions across the state leading to unmanageable caseloads; or, b) the standards themselves do not do enough to guarantee a defendant's right to counsel enshrined in the Sixth Amendment. Neither of these contentions have been clearly identified to be a state-wide issue requiring the proposed drastic changes to the standards governing public defenders. Neither the WSBA nor the National Public Defense Workload Study by the RAND Corporation ("RAND Study"), identified as the primary basis for the proposed standards, has clearly looked at quantifiable data for such issues in Washington. The Supreme Court should not adopt any changes to the standards until an appropriate Washington-centric study and analysis is completed on these points.

There is no evidence that there is a crisis of vacancies or quality representation throughout the state.

Commenters in support of the proposed changes cite difficulties in hiring and retaining public defenders. No one disputes that it is difficult to retain any member of the criminal justice system. For instance, it is well-documented that cities and counties across the state are struggling to fill vacant positions for police officers, often competing with one another for the few available applicants, and offering historic hiring and retention bonuses.

The City has made tremendous strides in filling vacant police officer positions utilizing higher pay, hiring bonuses, lowering barriers to become an officer, and utilizing schedules and benefits to enhance officer work/life balance. In those agencies where

public defender recruitment and retention may be an issue, these tools would also be effective at filling public defender vacancies. Additionally, public defense attorneys qualify for loan forgiveness after ten years of making payments, but there are opportunities for expanding loan forgiveness or even loan payments to enhance recruitment and retention of public defenders. These types of solutions are legislative issues and ones that the Washington Legislature and OPD should consider, promote, and support as appropriate.

However, it does not appear that this issue, specifically related to public defenders, is pervasive across the state, or common among any number of jurisdictions. For example, the City of Spokane Valley has not experienced this level of alarm when it comes to hiring and retaining public defenders. The City of Spokane Valley currently contracts with Spokane County for public defense. As of October 2024, the Spokane County, Public Defender's Office had a fully staffed group of misdemeanor attorneys. That said, the proposed caseloads will create approximately 23 more misdemeanor attorney vacancies, 12.5 investigators vacancies, 14 new mitigation specialist or social worker vacancies, and 8.5 paralegals vacancies.

Given the significant investment that will be required to meet these requirements, local agencies such as Spokane Valley will have to forego funding in other areas of the criminal justice system. This will create further crises throughout the entire system. Without a corresponding increase in prosecutors, prosecutors will be forced to dismiss or forego filing cases, effectively leading to the decriminalization of many misdemeanors and gross misdemeanors.

There is no evidence that public defenders are failing to provide constitutionally required representation. Upon reviewing the discipline notices published on the WSBA website, there does not appear to be one public disciplinary notice concerning any of the Spokane County public defenders in the last 10 years. Further, no complaints have been provided that have not been addressed as required by RCW 10.101.030 and Spokane County Code ("SCC") 1.17A.160¹. Additionally, the City of Spokane Valley is not aware of any situation where public defenders have failed to sign certifications of compliance under the current standards. Other comments submitted by other jurisdictions indicate similar experiences.²

If there are issues in certain jurisdictions with hiring and retaining public defenders, or isolated crises of constitutional magnitude, such a local issue should not be resolved at the state level in a way that creates an issue for nearly every other jurisdiction statewide, especially for those agencies like Spokane Valley that are not currently experiencing such problems.

¹ SCC 1.17A.060 provides "The public defender's office and counsel for defense shall promptly respond to clients who make complaints and should keep a written record of the complaints and the response."

² See, e.g., Comments from the City of Kent, October 8, 2024.

In order to determine whether such an issue exists in the first place, an appropriate study is necessary. Such a study can be done in short order because a significant amount of necessary data is already available.

The RAND Study is not the appropriate study to rely on for Washington

The RAND Study, on which the proposed standards are based, concludes that the problem with excessive caseloads is that they do not allow public defenders to “give appropriate time and attention to each client,” which results in less than full investigations, unfiled motions, and poor representation.³ Yet, other than rare anecdotal evidence, no data was presented by the WSBA that these concerns are a pervasive trend in Washington.

Critically, neither the WSBA proposed standards nor the RAND Study considers the effect on an attorney’s time per case when adding all of the new support staff the current proposal requires. Adding support staff should greatly reduce the average time dedicated to each case.

The proposed caseload limits also do not take into account that the ultimate decision to resolve a case or go to trial remains with the defendant. RPC 1.2. For misdemeanors, the consequences of the pending charge may be worse than any result. The choice to sit in jail, or show up to another pretrial hearing when the defendant could lose their job, their housing, or their children, is the choice of the client. The caseload standards as proposed, and the RAND Study, simply ignore these and other realities.

Ultimately, the WSBA’s recommendations fail to heed the warning of the RAND Study on which these changes are based: “[t]o use this study effectively, jurisdictions should begin by gathering *basic data on their providers’ caseloads and attorney hours available and then go through the process...to assess whether attorney staffing levels are appropriate and establish standards, limits, or review processes to avoid overload.*”⁴ The WSBA provides no state-specific evidence supporting the contention that constitutionally deficient representation is prevalent, nor any data to support the specifics recommended in this overhaul. Utilizing a methodology based on anecdotal evidence and guestimates from out-of-state attorneys is inappropriate by the RAND Study’s own admission.

The City proposes a statewide study because there is lack of consensus on not only the source of the issue, but whether an issue exists in the first place, and because the necessary data is available.

What follows is a short, non-inclusive list of valuable information that the WSBA, and the Office of Public Defense (OPD) currently has access to:

³ RAND Study at xv.

⁴ *Id.* (emphasis added).

- The WSBA’s Office of Disciplinary Counsel reviews grievances filed against attorneys, yet there is no historical evidence presented of grievances filed against public defenders, let alone an increase since the original SID were adopted in 2012.⁵
- The number of attorneys who refused to certify to the court that they were meeting the current Court promulgated standards.⁶
- Previous WSBA Standard Eight: “The legal representation plan shall require that the defense attorney or office maintain a case-reporting and management information system which includes number and type of cases, attorney hours and disposition. This information shall be provided regularly to the Contracting Authority and shall also be made available to the Office of the Administrator of the Courts. Any such system shall be maintained independently from client files so as to disclose no privileged information.”⁷
- The number and type of complaints lodged against public defenders.⁸
- A simple search of the clerk’s office in any jurisdiction could provide data related to the number of continuances granted for each type of case and the reasons for those continuances.

All of this information is critical to understanding whether a crisis of constitutionally deficient representation actually exists in Washington. If such a crisis does exist, further study of the available data would inform appropriate solutions, whether that be amendments to the standards, the way in which specific local jurisdictions provide the required services, or other recommendations potentially wholly unrelated to public defense, such as the effect of alternative case resolutions or increased sentences on the number of certain cases filed in each jurisdiction. Successful outcomes resulting in rehabilitation and low recidivism means less need for public defenders. However, until the study is complete, we just do not have the information necessary to make such an assessment.

The Judicial Branch’s own OPD admits and requested such a state-specific study in order to fully inform any statewide solution. In its 2024 supplemental budget request, OPD responsibly proposed:

⁵ Out of 37 WSBA published discipline notices in 2023, only one attorney appears to have been reprimanded for representation related to a criminal matter. The remainder of the discipline was largely for reciprocal discipline taken by another state’s bar association, converting client funds to personal use, trust management violations, and failure to communicate with clients and exercise diligence regarding various family law or other civil cases.

⁶ These are filed quarterly and are available at every public defense office.

⁷ Many jurisdictions adopt the WSBA Standards for Indigent Defense by reference or specifically require the maintenance of attorney activity or time records consistent with Standard Eight. For example: City of Spokane Municipal Code 03.11.010; King County Code 2.60.026; Whatcom County Code 2.09.070; Thurston County Code 10.100.080; Renton Municipal Code 3-1-6; *see also* SCC 1.17A.090 (explicitly requiring the same reporting).

⁸ RCW 10.101.030 requires standards to include “reports of attorney activity”, and “disposition of client complaints.” Again, many jurisdictions, in order to comply with these requirements in state statute, specifically adopted the WSBA standards, or reiterated the same through their own code language. See SCC 1.17A.160 (“The public defender’s office and counsel for defense shall promptly respond to clients who make complaints and should keep a written record of the complaints and the response.”)

[O]ne-time funding to contract with an independent subject-matter expert organization to conduct a statewide evaluation of county and city public defense services. Using an objective perspective founded in state and national public defense standards and an understanding of public defense systems in other states, the selected organization will take a ‘deep dive’ look into a sample of representative jurisdictions in Washington.... At the conclusion of the evaluation the organization will submit a report to the Legislature identifying current barriers to effective representation, and will recommend local government and state government solutions for effective strategies to ensure constitutionally sufficient services.⁹

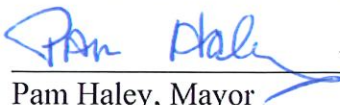
And, as recent as September 24, 2024, OPD again acknowledged the need for a study:

There is no consensus amongst the defense community about the problems in public defense...because of all the differences between 39 counties and 200 cities, each location is structured completely differently. You get, um, defense directors right now that say, hey, we really don’t need anything, we’re doing okay, except for maybe recruiting, whereas I would have completely different view based on my experiences.¹⁰

Washington is similarly situated as the seventeen other states, including Idaho, which conducted state-focused studies cited by the RAND Study. They faced similar challenges, but all found a way to complete a study. As stated above, WSBA and OPD have the information available to evaluate whether a problem exists throughout Washington. Until evidence of a crisis of constitutional magnitude across the state is presented, local jurisdictions should retain control over the services they provide within the confines of the current standards.

Finally, the City recommends the Court consider adopting, in some form, proposed Standards 8, 11, and 15. These standards were previously reserved by the Court, and present an opportunity to enhance data collection and support for public defense attorneys while a study is conducted. Such a measured approach speaks to concerns of both proponents and opponents of the WSBA proposed rules by shining a light on the state of public defense services, and allowing cities and counties to tailor support for public defenders based on the unique circumstances of their local jurisdiction.

CITY OF SPOKANE VALLEY



Pam Haley, Mayor

On Behalf of the City of Spokane Valley City Council

⁹ See “Washington State Judicial Branch 2024 Supplemental Budget.”

¹⁰ See, House Civil Rights & Judiciary Committee, September 24, 2024, at <https://tvw.org/video/house-civil-rights-judiciary-2024091187/> at 48:57.

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Proposed Standards for Indigent Defense
Date: Wednesday, October 30, 2024 1:56:19 PM
Attachments: [City of Spokane Valley Comments on Proposed Standards for Indigent Defense.pdf](#)
[image002.png](#)

From: Susan Bullock <sbullock@spokanevalleywa.gov>
Sent: Wednesday, October 30, 2024 1:16 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Proposed Standards for Indigent Defense

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Hello,

Please see the attached letter from Mayor Pam Haley regarding the above-referenced matter.

If you have any questions, please do not hesitate to contact her at the number on the letter or myself at (509) 720-5105.

Thanks,

Susan

Susan K. Bullock | Administrative Assistant
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