**From:** OFFICE RECEPTIONIST, CLERK
**To:** Martinez, Jacquelynn
**Subject:** FW: Rule Change for Indigent Defense Standards
**Date:** Thursday, October 31, 2024 3:10:50 PM

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**From:** Curt Liedkie <CLiedkie@asotincountywa.gov>
**Sent:** Thursday, October 31, 2024 3:00 PM
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
**Subject:** Re: Rule Change for Indigent Defense Standards



I am Curt Liedkie, and I am the prosecutor for Asotin County, which has a relatively small population. It is also far from the centers of population and, while I happen to think it is a hidden gem, has little attraction for those in more urban areas. I have been a prosecuting attorney (deputy or otherwise) for 24 years. I have had opportunity to observe public defense, albeit from the other side of the table, for a significant period of time. My opposition is based upon these observations and the problems that arose after the initial standards were adopted a dozen years ago.

Prior to 2012, we had little difficulty finding qualified attorneys to represent indigent defendants in Asotin County. It should be noted that the vast majority (exceeding 95% and likely higher) of defendants charged with a criminal offense qualify for public defense in Asotin County. Asotin County is rife with generational poverty. When I began my career, we had several seasoned attorneys, including death penalty qualified, who were on contract to provide public defense in both felony and misdemeanor courts. When conflicts arose, local private counsel could and would accept appointments at the going hourly compensation rate, to represent indigent defendants. There was no shortage of attorneys in Asotin County. Upon passage of caseload standards under CrR 3.1, Asotin County immediately lost its most seasoned defense attorney due to having to chose between contracts which he was then performing in multiple jurisdictions without issue. His issue was that the total caseload between the contracts would cause him to violate the standard, so he terminated his contact with Asotin County. Then began a series of contracts between Asotin County and various attorneys in an effort to fill the void. Applicants were immediately sparse due to the additional requirements. Many of these resulted in claims for ineffective assistance, some sustained, which have been documented in the case reporters. Private counsel largely stopped providing help in an "off-contract" setting as they had before because, under the new rule, even accepting a single appointment required the attorney to certify that they qualify under the rule (i.e. do not exceed the caseload maximums). Most private attorneys, especial those with substantial skill and experience, are fully capable of running a practice well in excess of double what the caseload standards would allow. They were then left with the Hobson's choice: accept the appointment and severely cut their private practice, or decline the appointment and opportunity to serve in a noble capacity for lesser compensation. For obvious reasons, most would decline to take court appointments. Further, because they could not certify their qualifications, they were ethically and legally obligated to decline. After all, the court couldn't require an attorney to violate the rules of ethics or the law.

Over the next decade and for the first time in anyone's memory, Asotin County suffered a public defense shortage of crisis dimensions. Despite best efforts at recruitment by county officials and judges, the availability of qualified counsel willing to take on a contract which would choke their practice waned. Given the effects of the first round of caseload standards, the new proposal was, needless to say, not a welcome sight. A little measure of "reform" has all but crippled my county. A larger dose of this poison will certainly be fatal. If one is presumed to intend the natural consequences of one's conduct, then the new standards certainly appear to be the mechanism for utterly devastating the criminal justice system. The number of attorneys necessary simply isn't present in the state, much less in Asotin County, to support the standards as they currently exist, much less under the proposal. This is especially true where there is a general trend of reduction in the number of lawyers graduating and passing the bar, even with alternatives to licensure. We have simply eliminated a large section of attorneys who would otherwise be willing and able to represent indigent defendants.

The idea of caseloads is not new. RPC 1.3 has always required attorneys to meter their practice so as to maintain the ability to represent a client with due diligence. To the extent this has not been effective, the Courts need only look to the local benches who have turned a blind eye to attorneys who have been violating the RPCs and failing to move litigation. Perhaps more time and training could be spent at judicial college to help trial court judges identify attorneys who are exceeding their capacities and giving court's options with how to properly deal with these situation as they arise. After all, the trial judges are the first line of supervision when it comes to enforcement of the RPCs. That said, perhaps it's time to take a look at Washington's "should" rule as it relates to ethics violation reporting under RPC 8.3 and adopt a "shall" standard for attorney reporting. In either event, the attorney is in the best position to measure his or her own capacities. The attempt to create a metric for measuring work loads has not been workable to this point, resulting in a decrease rather than an increase in services available to the indigent public.

The jaded may say that disabling the system is the ultimate goal and serves the indigent defendant by preventing the State from even prosecuting the case. If the system is destroyed, then it can't continue to harm indigent defendants. Even assuming this were accurate and the intent of such reforms, it would be shortsighted to believe that these reforms help the impoverished. Concern for the indigent defendants is laudable. These individuals deserve, at a minimum, diligent, qualified counsel to assist them. However, one aspect that may be overlooked is the impact that destructive reforms will have on the poorer communities as a whole. Impoverished persons are clearly and statistically more likely to be victims of crimes and most of the offenses committed against the poor are committed by persons who would qualify for court appointed counsel. Therefore, impoverished victims are going to be denied access to the courts for redress of the crimes committed against them. This population is substantially more vulnerable and altogether more likely to be victims of crimes, including violent offenses. They are also more likely to suffer irreparable financial harm from even "mere" property offenses as they are often dismissively referred to, because without resources, these populations are unable to recover in a reasonable time. Theft of a vehicle results in loss of a job because the owner could only afford liability insurance as required by law (rates for which have skyrocketed due to inability of insurance companies to be awarded restitution). Putting aside the wisdom of pitting affluence against poverty, the financial destitute do not have the resources to seek redress on their own and are almost certain to be reliant upon the State to obtain justice, including restitution. If the State cannot file charges because there are not attorneys available, it will be the less financially fortunate who will suffer the most.

Finally, and as a lesser but important note, private counsel are not bound by these standards which clearly demonstrates this is not a constitutional issue. Anyone, including an indigent defendant can privately retain any CrR 3.1 non-compliant attorney without any issue whatsoever. If this rule is really about assuring constitutionally sufficient representation, it should be applicable to private

counsel as well. It is not, which demonstrates that this is not an appropriate subject for court rules, but rather, a topic more appropriate for the legislature, as a question of policy. In any event, for what it is worth, this is the opinion of a small town prosecutor, humbly submitted. I thank you for the opportunity.

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**PLEASE NOTE: County email addresses have changed. My new address is cliedkie@asotincountywa.gov. Emails are currently being forwarded from the old email address of cliedkie@co.asotin.wa.us. Please update my contact information to avoid interruption in our communications.**