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Justices,

I graduated from Gonzaga University School of Law in 2004. I moved to Cowlitz County, Washington, where I grew up, and began practicing criminal defense. At that time the County operated their public defense system on a contract system, employing about 10-12 attorneys to represent people charged with felonies at public expense. I currently run a small firm that employs three attorneys and three support staff. We have a contract with the Cowlitz County OPD for indigent defense and have retained clients as well.

I rejoice and advocate for changes that improve the system to support better defense of indigent defendants. I have become aware of the proposed changes to the caseload standards that over the next three years would diminish the case loads of public defenders. My initial reaction to this was that there is too much work and too few resources and that a lessening of the overall burden would be appropriate. But upon looking at the fine print, I am very convinced that the current proposal will not provide a better service overall, it is unattainable and that there will be major unintended consequences.

This proposed plan appears to be based upon an idealized picture that every public defender is a diligent attorney with excellent skills who simply can't reach their full potential in the defense of their client because they are overworked. This proposal caters to the idea that if this idealized public defender is simply given fewer cases, they'll be able to devote more time to representation of each case and that a more just outcome will occur for every defendant. For these individuals, a lower caseload and more resources would allow them to better represent their clients. But, as much as I wish it were true, the idealized attorney this would benefit is often not the one actually working in public defense. Public defenders often get painted with a single brush as not being knowledgeable attorneys who fail to provide zealous defenses. While this is overwhelmingly inaccurate, there are enough examples of this where the stereotype persists. It is not uncommon to see lazy attorneys who are simply not very good at their job practicing criminal defense. When a potential client who is already represented by an attorney from OPD comes in to hire me I have them tell me of their complaints with their current representation. Then my first question is "who is your assigned attorney?" I know there are excellent attorneys employed by OPD. When they give me one of those names, I know that they are getting a quality defense. It helps inform me as to whether or not I think their complaints are legitimate. If they give me other names, I assume their criticism is warranted. My concern is that if these changes go into effect, a healthy percentage of the public defenders in the State of Washington will simply take five-day weekends. There are some people who will not put in extra effort, no matter how light their load is. Reducing a caseload will not make people more diligent or increase their desire to be better at their job.

I fully agree with the spirit of the rule change. I think fewer cases are appropriate. I also think more money for investigators is necessary. A person being capped at 8-10 serious cases a year is probably appropriate, but the proposed 2027 numbers for basic felonies appear to have been a number drawn out of a hat by someone who doesn't actually practice criminal defense. Sometimes you meet with the client, review the charges and reports with them and come to the determination that they simply committed the crime, that the investigation is solid, and that mitigation is the correct course. If you get a client into a therapeutic court, it might take a total of 8 hours with court time. If the prosecution is reasonable, an equitable outcome can be negotiated, those cases also take very little time. If I were to handle 47 of these cases, I wouldn't have anything to do for 7-8 months a year. To have that number be a real cap, you'd have to go to trial 30 times a year. That will never happen at a 66% clip. I go to trial about 20 times a year, which is more than most, but the thought that 47 class C and B felonies could take an entire year to defend is laughable.

I think the proposed changes would also have a number of unintended consequences. The first is that the new number of defense attorneys that would be required to staff each counties' public defense simply do not exist. For the last 10 to 15 years Cowlitz County transitioned from a contractor model to a county office of public defense employing 8-10 felony public defenders along with two to three contractors who handle between 100 and 150 cases a year and to assist with conflicts. I have continued to act in this capacity as a contracted public defender. With the proposed changes, just in superior court, Cowlitz County would need 25 to 30 attorneys to do the work currently done by 12-14. We have had difficulty getting people to come to our county to practice law and our public defender's office has had an open position for over 2 years that they cannot get anyone to fill. If we can't find one person, I can't imagine they're going to be able to find 14, especially when every other county would also be looking for attorneys.

The practical effect of a lack of defense attorneys will have debilitating consequences for smaller counties. Around May or June of every year, attorneys are going to start running out of numbers and for the last six months of the year, no one is going to get appointed an attorney because there simply will not be any attorneys to appoint. This is going to lead to cases being dismissed when the courts weigh the interest of justice against the undue delay. This will lead to lengthier incarcerations while people await representation.

The proposed changes will also punish the defendants on the margins of society. The federal guidelines that establish indigency which inform who is eligible for court appointed counsel is not a realistic gauge as to who can afford an attorney. People can be far above the indigency line and still have no money left at the end of the month after paying for the basic necessities of life. Judges recognize this, and often appoint counsel to those people that do not qualify on paper but would never be able to retain an attorney on their own. If the judges are scrambling to make sure that there are adequate attorneys for the cases that are being filed, I can't help but think that they will be more stringent about who they assign counsel. This will lead to the working poor, who make too much for the appointment of council unable to afford any reputable attorney, being effectively unrepresented.

A cynical part of me thinks that is actually what is intended by these proposed changes. Whereas the purported intent is to make it so every case gets all the time that the attorneys think they need, the real effect would be to constrict the prosecutors ability to charge cases so as to not have more serious cases dismissed and would eventually, over the next 10 to 15 years of chaos, lead to

a large and powerful statewide office of public defense. In the meantime, individual counties would be left to fend for themselves for what would turn out to be a multimillion-dollar unfunded mandate that they can't hope to satisfy due to a lack of defense attorneys, even if they agree to pay for it.

I don't have much of a personal interest in this other than I think it would be terrible for the local system of defense. I acknowledge that it would affect how my business is run. My firm does well enough where we could function without court appointed work, but myself and the attorneys I employ think that effective public defense is a civic duty. We think it is important to contribute to that system in an effective way.

My understanding of these proposed changes is that if a private attorney took even one court appointed case, they would have to adhere to the standards as outlined in the proposed rule change as to overall caseload levels. I have an office I maintain of three attorneys and three support staff. In no world could you run an office if you were constrained to 47 cases a year per attorney. If these rules are implemented, my office will eventually have to stop taking any court appointed cases. I don't want to decide between my bar card, accepting public defense work or laying off staff, but I fear the proposed rule changes could lead to that.

In King County, these changes would not be much of an issue. They have multiple wings of the office of public defense that are walled off from each other. It is not uncommon to have cases where there are two to three co-defendants charged out of a single episode that need publicly appointed council. In those situations, in places like King County, the defendants would simply be spread to the different agencies that already exist. It would greatly affect smaller counties that have a single office of public defense. In those counties, in this situation, the county office would need to hire a contractor to represent the co-defendants. If I were to accept a conflict case, I would essentially have to forego practicing law for the balance of the year. I could not do this. This would have the effect of making it so that if you had retained clients, you could never take publicly appointed cases. We would have a wholly bifurcated defense system; one set of defense attorneys if you can't pay, another if you can.

While the proposal makes everyone believe that there will be a better product. I think that this will destroy the smaller county's ability to effectively provide representation to a majority of the people charged with crimes and will not provide better outcomes for the overwhelming majority of clients.

Sincerely,

Daniel Morgan

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