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**From:** Emmerich, Elaine <emmerich@kingcounty.gov>  
**Sent:** Friday, October 25, 2024 2:46 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Support for Public Defense Caseload Reform

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Good afternoon,

I am a public defender in Seattle. I've just begun my third year of practice, and am transitioning from a misdemeanor to a felony caseload in about a week. I'm not sure how long I'll last; I am constantly triaging, and it is not possible to serve my clients the way that they deserve. But I first want to highlight the ways that our high caseloads harm people other than my clients.

I have seen countless victims and complainants in court, distressed at the number of continuances and the amount of time they have to wait to see a resolution to their cases or cases of their loved ones because the lawyers keep switching or because the lawyer needs more time to work on the case. Victims keep setting aside blocks of time for testifying at trial, only for the case to be continued because of the lawyers' bandwidths, causing stress and needless wasted time. This is particularly true with domestic violence cases. Public defenders' large caseloads are harmful for everyone.

It's surprising to me that there are prosecutors and judges publicly opposing these changes; they witness (and have to suffer through) the consequences of public defenders' high caseloads and turnover when one case gets continued five times because the defense attorney doesn't have the bandwidth. When one hearing turns into five, that's five times the amount of work for everyone. It takes up five times the amount of space in the system. I don't think that prosecutors' positions are at all relevant here, given that by definition they are stakeholders with an obvious incentive to complain about the resources given to their opposition. But I've personally spoken to several prosecutors who believe that public defense caseload reform would make their jobs easier and would be better for victims, but for political reasons, do not want to submit public comments because of their offices' position—and because they're scared that the idea of giving public defenders more resources might not land well with voters. That is not the way that public stewardship of resources *or* constitutional rights should work.

Prosecutors and judges are constantly ordering our clients to complete treatment, and I think everyone is on the same page about treatment being both good and important for our communities—so we need to fund the people that actually make those referrals and arrange for treatment to happen in the first place. Our mitigation specialists connect people to much-needed substance use and mental health treatment that addresses the root cause of much of the visible crime in our state. I feel fairly confident that the prosecutors and judges in my court would be thrilled if we were able to hire additional mitigation specialists; there wouldn't be nearly as many frustrating hearings where everyone is just waiting around to reset the case when there are insufficient resources to get a treatment bed or a sentencing report. We also need to fund our support staff and in particular, we need more investigators—*everyone* benefits from having a well-trained and prepared investigator who is able to conduct interviews in a manner that is kind, patient, and sensitive towards victims and witnesses of crimes. It also prevents wasteful expenses of time for the many police officers, troopers, detectives, doctors, nurses, toxicologists, and other public workers that we are typically required to interview prior to trial. Doing these tasks in an efficient and respectful manner is impossible when investigators have unbearable caseloads. We'll also frequently continue trials because our investigators did not have enough time to complete interviews prior to the trial date.

Many critics of caseload reform point to the fact that my clients are guilty of criminal offenses—essentially, that they are bad people who do bad things. I disagree with that notion entirely, but putting that aside, I sometimes have clients who are genuinely falsely accused. Unfortunately, disproving an allegation typically takes more time and attention than I can allocate to a single case. The perverse result is that I am least able to effectively represent innocent people, and they are disproportionately harmed by my large caseload. And when there's a case that ought to be dismissed, I don't frequently have the spare hour that it takes to review the discovery and email the prosecutor. Instead, my client might languish in jail until I find the time, at taxpayers' expense.

There are so many resources being wasted and people being harmed by the system's inefficiencies. But it is also important to recognize that as a result of high caseloads, my clients just aren't getting the representation they deserve. Earlier this week, I was on the phone for a short 30 minutes with a new client, and by the end of the conversation, I had 8 missed calls from other clients. I did not have time to call them back, and I don't know when I will have time. I have had a client relapse on drugs explicitly because they were so stressed out by the lack of communication from me when I was too stretched thin to respond. He's picked up new cases since then. I have to carry around that guilt, but so should every actor who is resisting caseload reform. When I have to continue cases or I only have the ability to speak to clients about their cases for minutes at a time with zero flexibility, my clients end up waiting around for me and missing work. They miss childcare pickups, or the open hours for the food bank. It screws up access to other resources and has an adverse effect on my clients' ability to make positive contributions to their communities.

On a more self-centered note, I've had several weeks recently where the earliest I've left the office all week is close to 9pm, and I can't remember a week in recent memory where I *haven't* had at least one day of working past midnight. It is unsustainable and purely a function of our caseload—and mine is truly nothing compared to many of my colleagues'. With just a misdemeanor caseload, I am progressively getting pushed closer to my breaking point. I want to be able to do this work, but the

volume is unworkable. I'm worried that I won't be able to keep this up, and with a felony caseload, it'll only get worse. In my short time working here, my office has lost many senior attorneys who I looked up to and learned from, and every time someone leaves, their cases get redistributed to the rest of the staff, piling on even more work and contributing to cyclical burnout. My health is suffering, and my representation is not getting better as I get more experienced because my workload is only increasing. My colleagues and I make dark jokes about wanting to be hit by a bus and the real tragedy being having to inherit each others' caseloads.

I also share clients with public defenders from other jurisdictions, some of which have opposed these rule changes. I talk to these attorneys (some of whom are unable to make public comments, similar to the prosecutors mentioned above), and I talk to my clients about these attorneys. It is distressing to me that the counties that consistently provide the lowest-quality representation are not interested in raising the bar for their clients, whose rights are being violated on a near-daily basis by the scant amount of time their attorneys have to dedicate to their cases. It is disingenuous to claim that this rule change would make it more difficult to prosecute our clients—rather, it would make it actually possible to have *constitutional* prosecutions of our clients. There are absolutely funding incentives at play, but the first step in funding these necessary changes has to be changing the standards. The present caseloads are causing staffing shortages. I guarantee that more of my law school classmates would be interested in moving to WA and becoming public defenders, including in smaller counties, if the presently proposed caseload standards were implemented.

At the end of the day, I'm a pragmatist. Even if you don't care about the wellbeing of public defenders or our clients, it is more efficient and less costly systemwide to invest in adequate staffing for public defenders so that cases can keep moving forward without suffering constant delays, churn, and starting from scratch. Lower caseload caps would allow for access to justice for defendants and victims alike, and uses fewer resources. As a taxpayer, I'm irritated by our leaders continuing to push meaningless (and expensive) austerity instead of investing in prevention, whether its prevention of waste or prevention of crime. As a public defender, I want a humane caseload, and for my clients to have the representation they deserve. And as a human being, I want to be able to sleep and go to doctor's appointments.

Please pass these caseload standards for the sake of our communities, our collective resources, and our clients' basic rights.

**Elaine Emmerich**

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