From:	OFFICE RECEPTIONIST, CLERK
To:	Martinez, Jacquelynn
Subject:	FW: Comments On Why I support the Proposed Public Defense Standards for Indigent Defense; Please Do the Right Thing
Date:	Thursday, October 31, 2024 8:05:01 AM

From: Frias, Enrique <jofrias@kingcounty.gov>
Sent: Wednesday, October 30, 2024 7:05 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: RE: Comments On Why I support the Proposed Public Defense Standards for Indigent Defense; Please Do the Right Thing

RE: Comments On Why I support the Proposed Public Defense Standards for Indigent Defense; Please Do the Right Thing

To the Justices of the Washington State Supreme Court:

My name is Enrique Frias, and I'm a public defense investigator with King County Dept. of Public Defense. I work regularly with defense attorneys, and I'm routinely assigned cases that appear before the Seattle Municipal Court, King County District Court, as well as the King County Superior Court. The types of cases I investigate can range from misdemeanor charges, such as assaults, DUIs, trespassing, theft, animal cruelty, and others; as well as felony charges relating to rape, child molestation, burglary, robbery, as well as murder charges. The level of work, care, and attention to detail, as well as the ability to juggle multiple competing tasks and priorities is substantial, to say the least, in this line of work – especially given that it's public defense.

I am writing in support of the proposed court rule amendments to codify the WSBA's recently passed criminal caseload standards for public defenders and its support staff. As a public defense investigator, I am considered support staff for the defense attorneys. The WSBA Board of Governors approved these long-overdue updates to the maximum workload public defenders, and its support staff, can reasonably be expected to carry for a simple and obvious reason: They recognized the status quo has required public defenders & its staff, like me, to compromise our ethical obligations to our clients, and not be able to give all of our cases & clients the due attention they require and deserve.

This is not an academic matter – as unsustainable workloads drive my experienced colleagues out of public defense, some of whom are very brilliant, caring, and passionate about the work they do,

those of us who remain are forced to take on more and more cases carrying potential life-altering consequences for our clients. We do everything we can to vindicate our clients' constitutional rights to a speedy trial, as well as the other rights they're entitled to under the U.S. Constitution, but with the ever-increasing amount of cases that are filed by the prosecutors, the near-constant trials, and many other factors, many clients have no choice but to continue their case – and prolong their pre-trial incarceration; and/or, alternatively, force clients into unfair & unreasonable plea deals, and this occurs when their latest defense attorneys have the capacity to prepare for yet another trial.

Just to list a few examples of actual cases I've been assigned to work on, while I cannot mention specific names, court cause numbers, or other confidential info, I have experienced the following:

- misdemeanor cases where police arrested clients for very small & petty (alleged) theft charges; many of which the police failed to follow up with witnesses; collect surveillance videos; and obtain exculpatory information that would have avoided or minimized the client's time in the criminal justice system. In addition, prosecutors, despite having more resources and/or asking the police to do their job and actually investigate, could have determined that many of the allegations did not occur, or did not occur in the manner that they were originally reported; and only after the client has been incarcerated, or on electronic home monitoring, when defense makes phone calls and conducts interviews with key witnesses – things the police or prosecutors could have done before long before – only then do prosecutors decide to dismiss the cases.
- Additionally, with various cases that appear before all the courts, prosecutors often list witnesses in their "witness list," from civilian persons, alleged victims, officers, scientists, etc.; however, upon a trial date nearing, and oftentimes only after defense has conducted interviews of the prosecutor's own witnesses, only then do prosecutors decide NOT to list witnesses, for one reason or another, and do so only after a trial date is nearing, or after defense has shared summaries of the info we obtained. A major example of this is where prosecutors list 5-7 officers for a case (where it really didn't require that many officers, as many of them stand around) that will be called to testify, and weeks pass, and despite defense contacting officers to request interviews, they often never respond, or respond late, and days before the trial, prosecutors will state they're only calling 1-3 of the 5-7 officers that were originally listed. This, alone, creates a huge burden for defense, and puts the client at a disadvantage for the preparation of their defense. Now, multiply this by several factors, for all levels of court, and one can see how this creates a massive problem for prepping for a client's defense and completing tasks for that effort.
- With felony charges; often times there are credibility issues that come up with many of the witnesses. While the prosecutors list various witnesses to be called, many of which they end up NOT calling, this prevents defense from pursuing other investigative work that could have helped the client with their cases by not being able to seek information to show that the perceived credibility issues were in fact legitimate.
- Separately, I'm aware that prosecutors in some offices have an 'early plea unit' (EPU) where they offer lower-charges to client as opposed to the original charges, either to get less jail time or to get out of jail – but taking a conviction for a lesser charge. Again, similarly to the above-listed concerns, prosecutors will dangle these deals to clients, which forces them to accept it, either because the clients feel they will not get quick/adequate representation; and

moreover, many of these clients already have criminal backgrounds, and for them to accept deals only puts them in a more disadvantageous state, as it'll increase their offender score, making it harder for them to secure employment, housing, etc. While there are many reasons that I could contest a client's criminal background (i.e. bias policing, discriminatory prosecutors, unfair justice systems, etc.) – the issue here is that prosecutors dangle these deals when in fact, if they did their jobs and investigated, they'd see that many of these charges should have been dismissed, but instead, the prosecutors hope for higher conviction rates.

- Due to being limited to a 1500 word limit – I could go on, but I will leave it here.

I know you will hear from institutional actors claiming that these standards are impractical or would be prohibitively expensive. These concerns are real, but they cannot justify continuing a status quo that makes a mockery out of most clients' constitutional right to a speedy trial. My colleagues and I are already stretched to our breaking point. Never mind the fact that our current criminal justice system is not reformative or proactive in preventing crime, it only delays certain inevitabilities to recidivism and further adds to other issues, such as clients becoming homeless, resorting to drugs due to feeling their lives are hopeful and over, etc.

There is no question in that having more staff (i.e. defense attorneys, investigators, paralegals, social workers, etc.), would definitely enable us to – not only appropriate represent our clients and ensure that they are getting their rights met, but it could also help in other ways to reduce recidivism. For instance, defense mitigation specialists and paralegals often help clients find housing, get access to medical care, provide them with clothes, and a cell phone, and other valuable resources – many things that police and the prosecutors' offices do not provide. Because we've been able to help clients, we do have a high percentage of clients that are able to move on and be meaningful contributors to our communities and society as a whole.

Without the relief that these caseloads would bring, the quality of the representation I can provide to people who do not have the ability to choose their own lawyer will continue to get worse. At some point, I will reach the same conclusion as many of my former colleagues: I can no longer practice in public defense while claiming to honor my ethical obligations to my clients. It just doesn't allow for the ability to do all that we can for them.

The Supreme Court did not condition the right to an attorney on a government's ability to afford one when it decided *Gideon v. Wainright*. They rightly placed the obligation to find funding to pay for a public defender at public expense on the government seeking to take away an indigent person's liberty.
When deciding whether that right means my clients deserve someone with the time and capacity to zealously represent them, that is the example this Court should follow. I urge you to adopt the proposed court rules that would codify the WSBA's caseload standards for public defenders and its support staff so the right enshrined in *Gideon* entitles my clients to more than just a warm body with a bar card.

Thank you.

Respectfully submitted,

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