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Subject: FW: Objecting to OPD's proposition re: caseload standards
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From: Jake Clark <jclarkattorney@yahoo.com>
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Subject: Objecting to OPD's proposition re: caseload standards

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I have been practicing in felony and misdemeanors, dependency, ITA's, child support contempt, amongst other areas of law in Pacific, Lewis, Mason, Wahkiakum, Napavine, and Chehalis courts (to name a few) for the better part of 17 years. I have never been found ineffective and have taken probably 200 cases to trial (not to mention 16 this year wherein I have gotten not guilty or a lesser included on 9 cases).

I will number several key points below that the Court should consider prior to ruling on the proposed standards.

1. Salaries: I will use Mason County as an example (and there are numerous counties that have similar salary structures). They offer \$73-87k to a new public defender and that is step-based, and may offer a signing bonus. This is a wholly inadequate salary for a lawyer. Washington is one of the most expensive states in the nation to live in. Combine that with 100-200k in student debt and PD's cannot afford to remain in these positions. There are options such as loan forgiveness by working in an impoverished area but that takes 10 years and you are still making a paltry salary during that time. A Thurston county senior PD's makes approximately 159k at highest step. That is a good salary but it takes years to get to that point. A lawyer with 2 years experience as a PA or PD can go into private practice and make as much as a senior deputy in Thurston with similar benefits immediately, and it doesn't take long to double that salary. PD's need to be compensated appropriately, which means a significant increase in salaries across the state. This is highly unlikely because the commissioners in each county (and the ones who dictate the salary) are all running on budgets that are already stretched thin or are completely over budget and OPD doesn't provide enough financial support for this.

The reality of these new limits will greatly impact the cities and counties financially

and will dramatically impact providing adequate and available defense representation.

OPD appears to be recognizing the likely impact of their knee-jerk reaction by submitting alternative plans. One of my biggest concerns is their plans demanding all counties and cities fall in line with their demands and report to them. This dictatorship is misguided and does not have all counties and cities, PD's of all types, and defendants in mind when making these demands. The first way to attract new lawyers is to make their pay much more enticing.

2. Court inefficiency is a widespread problem: I've seen this in Thurston, Mason, and Pierce and from the more recent articles in the Bar news the eastern side of the state also has this issue. The courts hold what can be essentially named "cattle calls". This is where PD's sit for hours in court for only a few cases to be called.

I have been able to do what I do because in the courts I work in run a PD and PA favorable calendar (Mason DC is very inefficient and I spend as much time in one court appearance there as I usually do for the week in the others altogether). The efficiency of the courts I work in allows for me to have more time in the office returning calls, meeting with clients, prepping cases, and making several visits a week to the jail. I have spoken to PD's and staff in other counties and their PD's spend an average of 4-8 hours in their offices a week. That is crazy and this type of inefficiency clearly impacts a PD's ability to adequately defend their clients with a full case load.

3. OPD's failures: In Lewis Co. the State OPD provides 1/18 financial support for their PD budget. That equates to the salary of one public defender and because this state has adopted the need for case management supervisors and public defenders for the day to cover arraignments, preliminary appearances, and case distribution, that money essentially covers 1 of 2 new positions created.

OPD provides a paltry amount to each of the 39 counties budget but yet put numerous requirements on them to receive the money, such as not to exceed the caseload limits for their attorneys. Cities have to apply for small grants and they also come with strings. To give the Court of an example of OPD's short-sidedness. It was approximately 2018 when Lewis Co. Superior court needed some new dependency attorneys to fill some recently vacant positions. At that time, I had numerous contracts, including one for dependency. I got a call from OPD and was told that I could have an OPD contract but I had to limit my civil practice and drop most of my contract work with the county. For more than a decade I had effectively represented families and now I had to reduce my workload because of policy. They didn't even evaluate my ability, talk to the court, or talk to my clients. They just determined an arbitrary number of cases and workload a PD could carry and demanded I fall in line or I couldn't continue on the contract. So, now I no longer do dependency work. It is a shame, as I truly enjoyed helping families get back together.

As a independent contractor, I can and have rejected cases when I felt my case load was getting to a point that my standard for excellent representation was being challenged. OPD has the power within all their offices to reduce their PD's caseloads. We don't need the Supreme Court to make a rule for that!

4. Absurdity to restrict a PD's ability to work more: The new proposal is to make these standards mandatory, and not to allow any work outside of the max caseload. The standards lack credibility as it specifically says experience does not matter. You cannot honestly believe that a newer PD can assess a case, issue spot, or effectively try a case as effectively as I can. If the limits are adopted there needs to be an exception for those attorneys who can do more work and more importantly want to do more work. If OPD PD's got an incentive to take a greater caseload if the new limits were adopted I would bet there would be 90+ percent of PD's would take on more cases to get greater pay.

Also, the provision to limit an attorney's ability to take on work over an above the limits, or if they have a full load limit the attorney's ability to take on private work is absurd. The proposed 47 felony case credits if adopted could potentially mean that if I took a contract for that full load I could have maybe 30ish felony cases a year depending the case type and that I couldn't do anymore work than that under any circumstance. What would I do for the remaining 6-8 months of the year. I do 100+ felonies, 300+ misdemeanors, and 200 ITA's a year right now plus some limited privately retained work. OPD and the Court should not infringe upon my ability and desire to work and earn more, and to zealously represent several more defendants that need great representation!

The adoption of case hourly reporting is a burden that PD's don't need. That has traditionally been an appreciated aspect of being a PD versus a private attorney.

By adopting these standards several counties will suffer because all those conflict attorneys, case overflow attorneys from cities and counties will have to reject the offer to take cases because it will directly impact their civil practice. For me personally, I will have to drop all but one county court and that means Pacific and Lewis Superior will have to locate a new felony attorney, Lewis Superior will have to find a new ITA attorney, Mason Co. DC a new conflict and overflow attorney, Chehalis and Napavine municipal will have to find new arraignment and cases attorneys, and Wahkium superior will have to find a new conflict attorney. This is the impact on numerous courts just with me, and I know at least 10 attorneys that do what I do.

If these standards are adopted I will likely move back to civil practice with limited criminal work as will many of my cohorts because you will reduce our ability to earn a living commensurate with our ability and experience. We need to remember this proposal has absolutely NOTHING to do with effective assistance of counsel!

I implore the Court to reject the proposal, but direct the OPD offices to adjust the caseloads as needed to retain PD's, increase salaries, sign on bonuses, and student debt forgiveness to entice new hires and retain current PD's. If the Court decides to adopt the standards DO NOT impose the absurd restriction that impedes attorneys to work and earn more when we as a state have shown we can meet the current standards.

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