Snohomish County
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Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

RE: Standards for Indigent Defense

To the Honorable Justices of the Supreme Court,

I write to urge the Court to follow the recommendation of the Washington Association of Prosecuting Attorneys set forth in our October 18, 2024, memo to the Court concerning the proposed caseload standards for indigent defense. In addition to the points raised in WAPA's memo, I offer the following additional comments.

Local/Regional Variations
An independent and comprehensive workload study is required to better understand the indigent defense differences throughout the state of Washington. Snohomish County has a fully staffed, robust public defender association. By way of example, there are approximately 17 public defenders covering 8 district court courtrooms, while my office can only provide 8 deputy prosecuting attorneys to cover the same 8 courtrooms. Such a luxury does not exist in other counties – particularly Yakima and Benton where they are struggling to recruit and hire public defenders. It is critical to understand the "why" in order to be able to address the "how." A comprehensive Washington-based study can achieve this, while also looking at the criminal justice system as a whole. Presently, the proposed rule looks only at one leg of the three-legged stool (with the Courts and Prosecutors the remaining two, shortened legs).

Like Compensation for Like Work
The proposed court rule discusses a market rate for indigent public defense. This raises several questions. First, the legal profession has long recognized that similarly situated lawyers performing the same work shall be compensated in a similar manner (i.e., look at any civil attorney-fee case and the calculus for awarding attorneys' fees). In Snohomish County, we recognized over a decade ago the importance of salary parity for prosecutors and public defenders. I stood before my county council and persuasively argued that prosecutors and public defenders are doing the same type of work and should be compensated in a like manner. I believe that King and Pierce Counties have similar parity provisions in their collective bargaining agreements with public defenders and prosecutors. The proposed rule threatens to interfere with the collective bargaining

requirements of government entities and the attorneys they hire in their criminal justice system with disastrous financial impacts.

The proposed rule would dramatically cut public defenders' workloads from a maximum of 150 felony cases to 47 (or less) (serious or complex cases, which are weighted upward, can reduce the number well below the maximum). The same would not be true for prosecutors. Presently, attorneys in my non-violent trial unit continuously carry approximately 120 open, charged felony cases at a time. With a case resolution rate of approximately 6 per month, the annual total hovers around 195 cases per year (or nearly 25% more than current full-time public defense caseload limits). When two similarly situated attorneys are doing the same type of work and one handle four times as many cases (should caseload standards be reduced to 47 as proposed), "like compensation" would suggest that the attorney doing 4x the work would achieve 4x the salary. Does this mean that public defenders in counties with salary parity would have their salaries reduced to reflect the reductions in case load? Does this dictate that deputy prosecutors should receive three times the salary of public defenders?

Also, the compensation provisions interfere with bargaining between public entities and those they hire to carry out a service. The assumption underlying this proposed rule is that lawyers who engage in public defense are unable to negotiate the terms of their own employment. If lawyers cannot be trusted to negotiate on their own behalf, how can they possibly be expected to negotiate on behalf of those they represent? This court has already adopted, and enforces, rules of professional conduct requiring competent representation. As the final arbiter among the branches of government, this court must show restraint and decline to micromanage areas within the primary responsibility of the other branches.

The Court also embarks on a dangerous voyage into unchartered waters when it begins to dictate the salaries for classes of attorneys. Today it is public defenders. Will tomorrow bring the need to regulate what private criminal defense attorneys can charge? More importantly, if the proposed court rule is grounded in constitutional principles for effective assistance of counsel, then why do the proposed standards only apply to public defenders and not all criminal practitioners?

Artificial Caps on Criminal Case Filings

Significantly, many in support of the proposed rule have declared that there will not be an increase in public defense costs as the rule will force prosecutors to file less cases. The court should not intrude upon the province of the executive branch by placing artificial limits on the number of cases prosecutors can charge. Locking in impossibly low numbers by court rule removes any flexibility of the criminal justice system to deal with temporary increases in workload that may occasionally occur. For example, the re-sentencings required by Court decisions in *Blake* and *Monschke* are responsible for a huge expenditure of public defender and prosecutor time and resources. Redoing that work adds another case credit to public defenders, thus taking them away from the ability to focus on current crimes against the community. The public has a right to see that the laws passed by the legislature are enforced by the executive branch. The judicial branch should choose to tread lightly in creating requirements, like those proposed, on the other branches through administrative rule making.

The Court should not provide the fuel to those seeking to burn the Criminal Justice System to the ground.

Many proponents of the proposed rule have made clear that their hope in adopting such extreme caseload standards will assist in breaking the criminal justice system. The suggestion that we just charge less is misdirected, as my office is already charging less due to present fiscal limitations. At present victims of crime, law enforcement agencies, and cities in Snohomish County are frustrated by my office's inability to charge all legally viable crimes due to a lack of resources. In Superior Court, we have to prioritize violent crimes against persons over felony property crimes. Many non-violent, felony property crimes are being declined to cities to prosecute as misdemeanors. If the proposed rule were to pass, the budget for public defense in Snohomish

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County would necessarily triple from $16 million/year to $48 million just to cover the current filings by my office at a time when the county is facing 1.5% budget cuts across the board and a larger fiscal deficit in outyears. With these significant county budget shortfalls, the proposed rule will force prosecutors to not file otherwise chargeable violent cases because the county cannot afford to hire the requisite number of public defenders (assuming that there would be available attorneys to fill the need). Victims not only deserve better, they have a Bill of Rights in Washington requiring better.

Thank you for your consideration of everyone's comments on this important issue of public safety and the criminal justice system.

Yours truly,

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