

King County Superior Court

Judge Ketu Shah
Presiding Judge

Judge Kristin Ballinger

Honorable Charles W. Johnson, Chair
Honorable Mary I. Yu, Chair
Washington State Supreme Court Rules Committee
Temple of Justice
P.O. Box 40929
Olympia, WA 98504

Re: Standards for Indigent Defense: Proposed Amendments to CrR 3.1, JuCR 9.2

Dear Justice Johnson and Justice Yu:

We write to explain why the letter authored by Judge Ferrara on behalf of the Superior Court Judges' Association (SCJA) should be read with the understanding that superior court judges are deeply divided as to the proposed amendments to CrR 3.1 and JuCR 9.2.

On this issue, the views of judges on the King County Superior Court are diverse, as we understand they are statewide. Many support the proposed amendments as written. Many support the proposal outlined in the SCJA letter. Many oppose the amendments, arguing that the standards are based on a flawed study and were written by a committee that was not truly representative of the stakeholders in the criminal justice system.

Much of the divergence comes from whether the judiciary has a duty to ensure adequate funding and personnel to meet any caseload standards it imposes. In federal court the answer is yes: public defense is funded by the judiciary, and thus the federal courts advocate for adequate funding by Congress to ensure the promise of *Gideon* is realized. *See, e.g.,* Congressional Research Service, [Judiciary Budget Request, FY2025](#) at 2 (April 4, 2024). Thus, there is considerable disagreement with the SCJA's statement that "funding of public defense is not within the purview of our authority."

However, there is broad consensus that public defense in the King County Superior Court is at a tipping point, with senior public defenders quitting¹ at an alarming and increasing rate.² And yet, arguably we are constrained from doing anything about it. GR 42 bars our court from enacting standards or doing anything to ensure that standards can be—or are—met.

¹ Why these attorneys leave is multi-layered from the attorneys we have spoken with. Some leave because the caseloads are overwhelming. Some leave because they tire of the micromanaging that occurs when cases are transferred by management. Some leave because they oppose the policies concerning in-person appearances. Some leave for personal or family reasons.

² We are finding that, as people leave, the departure rate accelerates. This results because existing caseloads are transferred, and attorneys rightfully feel overwhelmed with cases added in batches to their caseloads.

The mission of King County Superior Court is to serve the diverse public by administering justice through accessible, inclusive, and unbiased forums for the fair, understandable, and timely resolution of legal matters.

There also appears to be broad consensus that, even if the judiciary has no duty to ensure adequate funding, without adequate funding the nature of the crisis will shift but the justice system will remain in crisis.

Finally, there is concern that even with adequate funding, there will not be enough attorneys to meet the demand. We have learned from the King County Department of Public Defense (DPD) and former DPD attorneys that DPD has dozens of positions open that they cannot fill. They have been recruiting nationwide, have been given authority for pay increases, and yet still cannot fill the open positions. In certain practice areas, DPD has hired outside counsel to represent clients. GR 42 and the King County Charter constrain oversight of DPD by the judiciary and the executive, leaving few options at the local level. Potentially the court could assign counsel from the local bar or create standards and panels of qualified attorneys. But with GR 42 limiting our authority to act at the local level, we have few tools at our disposal.

Sincerely,

Ketu Shah

Ketu Shah, Presiding Judge

A handwritten signature in dark ink, appearing to read "Kristin Ballinger", with a large, sweeping loop at the end.

Kristin Ballinger, Judge