

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Martinez, Jacquelynn](#)
Subject: FW: Comments re Standards for Indigent Defense
Date: Thursday, October 31, 2024 11:40:09 AM

From: Matt Newberg <mnewberg@GarfieldCountyWA.gov>
Sent: Thursday, October 31, 2024 11:39 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments re Standards for Indigent Defense

You don't often get email from mnewberg@garfieldcountywa.gov. [Learn why this is important](#)
External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Please consider these comments in opposition to the proposed rules affecting indigent defense.

This rules package is unnecessary, not logically aligned with its stated goal, and ill intended.

Unnecessary – As has already been stated by the Rand survey and admitted by members of the Defense Bar, Lawyers (including public defenders) are bound by rules RPC 1.1 and 1.3. Better training and enforcement of these rules will better address the stated issue of “over-burdened” public defenders and will apply equally to all attorneys. RPC 1.1 requires that a lawyer must provide competent representation to a client, which requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Currently, an attorney should decline representation if they lack the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. RPC 1.3, states that a lawyer shall act with reasonable diligence and promptness in representing a client. Comment 2 – A lawyer’s work load must be controlled so that each matter can be handled competently. The existing rules better address the unique situations which exist in every practice. Arbitrary numbers applied in a rigid fashion are not the answer. Better training for lawyers and judges to recognize and enforce these provisions will accomplish more than this rules package.

Not aligned with stated goal –

One fault in the logic of the Rand survey and the proposed rule package, is the assumption that every defendant wants to challenge every allegation through trial. This is not the case. Believe it or not, many individuals who break the law and face criminal charges, wish to accept responsibility for their actions. The goal then is not challenging every factual allegation, legal principal and procedural requirement, but to obtain an acceptable resolution. The fact is, not every case requires hours of investigation, research, and courtroom time. Although many cases do require extended hours and resources, each attorney, client, and charge will determine when those resources need to be utilized.

Another fault in the logic behind this rules package is that a yearly caseload does not address the issue of how many cases an attorney has open at any given time. An attorney, under the existing and proposed SID rules, can consume all of their allowable points early in a calendar year. That attorney will then be without the ability to work for the remainder of the year whilst they wait for the clock to

reset. This rule does nothing to prevent an attorney from being overburdened for six months while completely unburdened the rest of the time.

The number of findings of ineffective assistance of counsel have not/ do not justify this overreaching rules package. If there was a widespread concern that defense attorneys are failing to properly address their cases, it would seem there would be more findings of ineffective assistance of counsel.

Ill Intended – It is clear that adoption of this rules package is aimed at limiting criminal charging by limiting the number of criminal cases a public defender can accept. Some incorrectly believe that Prosecutors drive criminal case numbers, when in reality criminals primarily drive criminal case numbers. This attempt at decriminalization by court rule clearly violates the Separation of Powers doctrine. As you are quite aware, the Legislature creates the criminal laws and the Executive branch enforces those laws. This Court is attempting to thwart both branches of government by limiting the enforcement of criminal statutes.

The proponents of these rules try to justify their position as protection of a Constitutional right. However, this is not truly a Constitutional issue, if it were, these rules would apply equally to the private defense bar and all defendants, not just indigent defendants.

As a personal aside, the first iteration of the Standards for Indigent Defense had a negative effect on public defense. Many attorneys had developed systems, expertise, and experience in their own practices. These skills allowed many private practice attorneys to accept public appointments to assist their local courts with conflict cases and/or cases involving certain legal issues. After the Standards for Indigent Defense were adopted, those private attorneys could/would not accept cases because it would then make them subject to the new rules and certifications. The standards cost the courts, and indigent defendants, some good attorneys.

While I respect and understand the want to ease the burden on indigent defense counsel, I dare to say all public servants are overworked and underpaid. It does not take a nationally peer reviewed study to verify that workers will undoubtedly always say that they would like to work less and get paid more.

This Court is facing a crisis of legitimacy. We once advised the public not to take matters into their own hands; rather they should call the police and let the courts handle these criminal matters. At least in that scenario the courts had a role and could exercise some power and control. As you continue to see the public's trust and respect for the courts dwindle, the public will not ask for the help of law enforcement or trust the judicial process, but will instead take matters into their own hands. This trend will involve ordinarily good citizens. The criminals who seek to do wrong do not/will not respect the courts or fear the ramifications of the judicial process. Most law enforcement will continue to do their jobs in an attempt to investigate and enforce criminal laws. Prosecutors will continue to charge when they are able. But ultimately, many matters will not be investigated, charges will not be brought, and courts will dismiss cases because there are simply not enough defense attorneys under these new rules. Because harms will not be addressed through our criminal justice system, citizens will attempt self-help. The Court does not have a role in self-help.

Public safety should be a concern for this court as should victim rights. Adoption of these unnecessary, illogical, and ill intended rules will do more harm than good.

Respectfully.

Matt Newberg