From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: CrR3.1/CrRLJ3.1/JuCR9.2 STDS - Standards for Indigent Defense
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From: Schueler, Michael <Michael.Schueler@kingcounty.gov>
Sent: Thursday, October 31, 2024 5:05 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: CrR3.1/CrRLJ3.1/JuCR9.2 STDS - Standards for Indigent Defense

Justices of the Washington Supreme Court,

The Court has asked how the current caseload standards as opposed to the new proposed standards impact effective representation of counsel. As it currently stands, the 150/400 caseload standard that Washington operates under is resulting in, not only ineffective counsel, but a constructive deprivation of counsel under *U.S. v. Cronic*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984). As the Court has heard from numerous others, Public Defenders are leaving the practice in droves. My own agency has seen 3 attorneys give notice this week alone – including two Class A qualified attorneys. Their reason of leaving appears directly related with their high caseloads – caseloads which are actually under the 150 number – highlight just how absurd 150 cases a year truly is. The ripple effect of these lawyers leaving, often without direct replacements, is that a cascade of older, complicated cases falls to an ever smaller and smaller cadre of qualified and capable lawyers who are then asked to do more with less. A transferred case effectively begins anew when a new lawyer takes over – they must review discovery, build rapport with a client, and continue on in the investigation – and on a class A case, where there can be dozens or more hours of video and other media, and hundreds to thousands of pages of discovery, this process is not quick.

Cronic made clear that "[i]f no actual 'Assistance' 'for' the accused's 'defense' is provided, then the constitutional guarantee has been violated." 466 U.S. at 654. To hold otherwise, "could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel." *Id.* "The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment." *Id.* at 654-55. Under the current caseload guidance we are dangerously close to this sham. I am, on some cases, my client's fifth or sixth attorney. I am leaving the Public Defender in January 2025 due to the caseload and other factors I discussed in oral testimony during the September hearing. This means my clients, often those accused of extremely serious offenses, will have yet another

attorney. A family member on a homicide case I am leaving lamented "So unfortunate that [client's] attorney continues to change consistently. I think that has played a large part in the delays." This case originated in January 2020 and I am the fifth lawyer on the case. Constant churning of lawyers has resulted in this delay. When we are reaching half a dozen lawyers working on one case and restarting it every six to eight months, it starts to feel like the appointment of counsel is nothing more than a sham and formal compliance with the Constitution. This is made worse as trial level judges deny continuance requests of lawyers on cases who state they are not prepared, often due to their caseloads and relatively recent transfers.

While I am proud of the work I have done on behalf of literally thousands of indigent accused in Washington, and am consistently impressed and proud of the work my colleagues do across the state, the trend has made it clear that effective, timely representation is not possible under the current standards. *Cronic* tells us that effective counsel is "the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." *Id*. at 657. The constant turnover due to burnout and high caseloads means that this adversarial testing, if it ever happens, takes years longer than contemplated by both the Court Rule and Constitutional right to speedy trial. Forcing those too poor to hire counsel to wait interminably for someone who will stay around long enough to provide meaningful adversarial testing certainly seems like we are perpetrating the "sacrifice of unarmed prisoners to gladiators" as cautioned in *Cronic*. *Id*.

This Court has a meaningful opportunity to stem this tide, to actually breathe life into the Constitutional guarantee of effective counsel, of speedy trial, and of ensuring the poorest of our society have true access to justice through the courts. The caseloads suggested by the Rand Study as passed by the Washington State Bar Association, would allow counsel the ability to work on cases in a timely and efficient manner. It would ensure that there is a meaningful adversarial testing of the prosecution's case. It would ensure that people – the accused, their families, and alleged victims – do not need to wait five years or longer for cases to resolve. If this Court does not codify these standards in full, then it seems inevitable that the churn will continue. That our system will become less and less adversarial, and that our system of Public Defense will be nothing more than that sham the U.S. Supreme Court discussed 40 years ago.

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