From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: Standards of Indigent Defense
Date: Thursday, October 31, 2024 2:30:16 PM

From: Lukk, Mikk <mlukk@kingcounty.gov>
Sent: Thursday, October 31, 2024 2:00 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Standards of Indigent Defense

To the Justice, and the people of Washington State.
I am writing to express my unequivocal support for the new proposed caseload standards. I have extensive and broad experience with the Washington criminal legal system that has afforded me an informed opinion on this matter. I have served as a public defender for 10 years, first in Pierce County, and now in King County. I have also supported friends and family who have been victims of serious violent crimes in Washington through their interactions with the system. Based on this extensive history, I firmly believe that the current case limits are woefully inadequate to address the realities of contemporary criminal practice. The consequences of constitutionally inadequate representation – both direct and indirect – are disproportionately borne by the most vulnerable in our community. The current system and standards fail to meet the most basic obligations that the criminal legal system promises to all members of our community.

An overwhelmed public defense bar results in unnecessary delays. This means that cases sit unresolved with little, if any, meaningful work being performed until they become “old” enough to take priority. Criminal defendants with meritorious defenses are denied the opportunity to clear their names. Victims and their families are strung along, receiving periodic notices and subpoenas for years while they await justice and closure. The personal costs associated with these delays are numerous; lost work, separation from family and loved ones, and the extraordinary stress on all interested parties as matters work their way through the system. Prosecutors and victims’ advocates complain to us that the long timelines caused by the overburdening of public defenders means numerous, repeated conversations that result in retraumatizing victims and their families. The simplest and most effective way to alleviate this stress is to ensure an adequate public defense bar, which will serve to lessen and even remove these barriers to resolution.

By continuing to maintain the status quo of underfunded, under-resourced public defense, the courts send a very clear signal to the community: the system is not broken: the system operates in

the way it was intended to operate—as a matter of policy, and of choice. The system functions as intended by the powers that be, in the face of objective, academic information and studies finding that the current public defense paradigm is inadequate by any measure, and that maintaining the status quo represents a policy failure that is both continuous and compounding. It tells public defenders that the promise of constitutionally adequate defense is hollow, while also holding individual public defenders to an impossible standard that the system itself does not follow. The fear of failing our clients due to a lack of attorneys is a constant companion in our daily practice. This fear should be addressed by the system, not carried by the individual public defender.

The nature of criminal practice has changed, and I have personally borne witness to that over the course of my career. The recent proliferation of digital cameras--through both systems deployed by law enforcement and seemingly ubiquitous civilian systems; the rise of cell phone forensics; and the expanding use of warrants to obtain information from digital sources such as email providers and social media sites--has created a new normal in which a single case can generate terabytes of information and literal weeks' worth of video. It can take one attorney months to sift the volume of discovery from a single case just to be prepared to do the basic groundwork of investigation and interviews. Even a handful of serious cases can rapidly consume far in excess of a full-time attorney's available time, a fact the current standards simply do not recognize.

As a public defender who has handled some of the most serious cases filed in King County, I have watched how the current caseload standards have resulted in an accelerating crisis of attrition. As experienced attorneys depart after experiencing burnout or in search of more sustainable careers, their caseloads are distributed across the remaining staff. These redistributed cases inevitably end up being the hardest – the highest stakes, the most complicated fact patterns, and the least amenable to simple analysis or resolution. The accumulation of the hardest cases on fewer and fewer attorneys increases the already brutal, crushing weight of the job, resulting in further departures and further concentration of these cases among the ever-decreasing number of experienced public defenders. In response to this pattern, the department of public defense has placed a premium on increasing the number of attorneys who are "qualified" to address these most serious offenses.

Unfortunately, by pushing less experienced attorneys through the qualification ladder so quickly, they are not afforded the opportunity to develop the soft, personal and interpersonal skills necessary to succeed as public defense attorneys trying the most serious cases. Technical proficiency is one thing, but learning how to speak with clients, their families, witnesses, victims, and others about the most serious criminal topics such as sexual offenses against children and homicide are entirely separate skills that take much longer to develop in a sustainable manner. Rapidly pushing attorneys through the qualification process fails to prepare these promising attorneys for the personal toll of reviewing oftentimes gruesome and painful discovery. It fails to allow them to develop the tools in their personal life that are essential in order to process and cope with the vicarious trauma of watching a client disappear into the prison system for decades, indeterminate sentences, or even life, then turning and answering questions from their bereaved parents, partners, and children. I have watched too many highly skilled junior lawyers make for the doors as the full weight of practice at the most serious level is dumped on their shoulders before they are fully prepared for the role. The current "solution" is only delaying the problem as the development

pipeline is stripped of so many who could be tomorrow's leaders in our field.

Notable objections to the new caseload standards cite the cost of providing adequate public defense as a reason for rejecting the new caseload standards. I would invite those who agree with this argument to show where in our Constitutions, be it article I § 22 or the Sixth Amendment, that this core Constitutional right may be limited by the political will to fund it. I encourage each of those lodging a cost-based objection to consider whether they would tolerate such an argument in support of limiting their own rights--or is it only valid when they seek to limit the rights of others?

In speaking with my peers across the public defense bar in Washington, I know that many attorneys see the fight for improved caseload standards as professionally existential in magnitude. The overall mood is that the result of the conversation we are having right now will determine whether many attorneys will remain in public defense practice. The proposed standards promise a long-sought light at the end of a very dark tunnel. They represent the hope that we can do this work in a manner that allows us to provide the quality of representation that every person deserves in a manner that is sustainable for our mental, social, familial, and even physical well-being. Failure to recognize and act upon the undisputed facts at hand will send the message that public defense is not a viable career, and that those who pursue it have been set up for failure. To paraphrase from a former colleague who left public defense practice, "I miss it every day, but the nightmares stopped--and I can sleep through the night now because I no longer have to worry about everything I'm not getting done for my clients." It wasn't the subject matter, it wasn't the discovery, it wasn't the clients – it was the constant pressure, from within and without, to do the impossible every day. This should not be the way forward. For those who practice on the front lines of public defense, it absolutely cannot be.

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