Holce Law Firm, PLLC

Nicholas A. Holce
Attorney at Law

318 West Main Street
Walla Walla, WA 99362
509-876-7471
nholce@holcelawfirm.com

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Washington State Supreme Court
P.O. Box 40929
Olympia, WA. 98504-0929

Re: CrR3.1/CrRLJ3.1/JuCR9.2 Standards

Dear Honorable Justices:

I have been a contract public defender in Walla Walla County since 2020, prior to which I was a Walla Walla deputy prosecutor, starting in 2013. When I started as a contract defender, I had a full caseload of court-appointed felonies. In 2021, I contracted with the County to provide indigent services for 125 felonies. Due to the ethical obligations contemplated by CrR 3.1, in 2023, I reduced that to 100 felonies. I anticipate contracting for fewer than 100 felonies in 2025 irrespective of the indigent standards because of the time consumption of each case and my duty to my clients.

I have watched with anticipation as the RAND study worked its way through the various organizations. I agree wholeheartedly with systemic reform to ameliorate the struggle my fellow defenders in the trenches face. In the last year, I have written multiple letters to my county commissioners to take anticipatory steps in light of the study and the possible changes that could sweep the State.

One inquiry I have about the proposed standards is about violations of the Uniform Controlled Substances Act. I am frequently appointed to cases involving charges of possession with intent to deliver. These cases are some of the most time-consuming I receive because they almost always involve one or more search warrants, and those warrants frequently require motions. I request these charges be added to the standard and that they receive a weight of at least 1.5 credits. Similarly, other VUCSA charges need to be addressed in the standards, or controlled substance homicides may be treated as one credit, which I submit is not consistent with the rest of the rule.

Turning to the detractors of these rules, I observe a number of complaints that bear discussion. A recurring concern I hear is about the financial strain a new standard would place on small municipalities and counties. However, the purpose of the standards is not to solve funding concerns:

the purpose is to ensure constitutionally adequate representation for defendants charged with crimes in the 21st century. It is not the Court's role to address the budget: that is the legislature's job. Instead, it is the Court's duty to promulgate guidelines about how wide the spigot can be opened when blasting public defenders in the face with a firehose of new cases. Whether the rule creates an unfunded mandate is neither here nor there. If we public defenders cannot provide assistance to clients because of the inordinate workload, then the criminal justice system as a whole suffers, and it will come crashing down on its own. Financial handwringing when the system is already careening towards disaster ignores why the system is hurtling in the first place. Ignoring the problem won't make it go away. The proposed rules are a necessary prophylactic against continued indifference.

Addressing the funding issue directly: I am aware a recurring concern is about how much public defenders will have to be paid to take contracts. How can counties possibly double or triple the amount they pay per case, they ask. I observe the Office of Public Defense did a study of private counsel retainers in 2020.[1] OPD found private citizens were paying $16,200 for sex offenses on average, and up to $33,000 if the case went to trial. They were paying $6,000-$10,200 for class C felony cases.

In contrast, in 2024 Walla Walla County pays approximately $1,600 per felony case irrespective of whether the matter goes to trial or not and irrespective of the number of counts in each case. I have heard anecdotally that this rate is significantly higher than any other county in southeastern Washington. Certainly, cities and counties receive a discount for contracting in bulk, but paying as little as 10% of what a private citizen has to pay per case reveals that the counties are already receiving more than a fair rate.

Similarly, according to OPD's 2020 study, private citizens were paying on average $3,400 for DV misdemeanors and $3,500 for DUIs.[2] In contrast, misdemeanor public defenders for Walla Walla District Court are currently paid 10% of that per case, or less.

Is it any wonder attorneys leave public service to take private cases since they can make as much by doing 1/10 the caseload?

Another concern is the shortage of defense attorneys currently in practice, along with the concern about prospective attorneys who may shy away from serving as public defenders in light of the stigma that public defenders are overworked and underpaid. The proposed court rule would address the first of those two barriers.

Many attorneys become public defenders because it is their passion. It is not a stepping stone to some other role. People are called to serve because of a desire to fix a system that is hurting. But that system bites back. Attorneys are leaving public defense in droves because of burn out. If caseloads were reasonable, then we would not have the level of fatigue that prompts people to move into other career choices. I know multiple public defenders who love what they do and would like it to be their career until retirement, but the crushing nature of the caseloads is actively pushing them away. The proposed roll-out of the standards is a strategic and prudent plan that provides a glimmer

[1] https://opd.wa.gov/sites/default/files/2023-08/00916-2020_FPrivateRates.pdf.
[2] https://opd.wa.gov/sites/default/files/2023-08/00915-2020_MPrivateRates.pdf.

of hope and an end to the tunnel for many attorneys who may be waffling between leaving and sticking it out a little longer, myself included.

With respect to recruitment of future attorneys to fill the need that would exist under the new standard: I observe OPD has obtained funds and is actively hiring for a position for someone to pursue public outreach to encourage and entice individuals to become public defenders in rural areas. That position creates the opportunity for someone to foster interest in students of all ages, from middle school up to law school.

Opponents to the rule change state a concern that public defenders are leaving, and that there is a shortage already. How can counties and cities increase the number of defenders when the number keeps shrinking? Step one to that answer is apparent, though: change the standards to avoid burn out to stop the exodus.

Opponents to the rule change claim there aren't enough attorneys to fill the openings that the rule would require. Solutions abound, though. Counties could follow OPD's lead and do more outreach. They could incentivize public service. They could court the attorneys who left due to burnout with the promise that the causes for their departure have been corrected. They could provide as robust a network of support as prosecutor's have so the entry into public defense does not have so high a threshold to get into.

The opponents excel at identifying issues but ignore the fact that their solution — leave things the status quo — will not fix anything. Indeed, their solution is to hope the problem goes away on its own. Claims that the new standard will break the system ignores that the system is already broken. Fifty years after *Gideon*, and problems persist. Decades of disparate funding between law enforcement and the public defenders of Washington has resulted in a robust arresting force but a diluted defense. Fixing the standards is one step — but only one step — in a journey to save the criminal justice system in Washington State. There will need to be other steps taken by other agencies, organizations, and legislative bodies. But simply pointing out that those organizations have failed to act is not reason for this Court to delay. I request this Court adopt the standards, with the inclusion of VUCSA offenses under 69.50 RCW.

Sincerely,

Nicholas A. Holce
Attorney at law