

October 2, 2024

By Email

supreme@courts.wa.gov

Justices of the Washington Supreme Court  
243 Israel Road SE  
Town Center East Building 3 First Floor  
Tumwater, WA 98501

Re: Washington State Bar Association Criminal Caseload Standards for Public Defenders

Dear Chief Justice and Justices of the Washington State Supreme Court,

My name is Peter Calloway, and I am a Visiting Associate Professor of Clinical Law in the George Washington University Law School's Criminal Defense and Justice Clinic. I am writing to strongly urge you to adopt the proposed court rule to codify the Washington State Bar Association's Criminal Caseload Standards for Public Defenders. These caseload standards are essential to protecting the rights of Washington's most marginalized and vulnerable.

Before I began my teaching career, I was a public defender in San Francisco for five years. I came to the profession because it was my dream to help people. Often, my colleagues and I instead feel like cogs in a machine, only a necessary part of a system cutting against the very reason we entered this profession. Excessive caseloads can reduce attorneys to symbolic check marks, nominally—but not actually—providing the assistance of counsel guaranteed in the state and federal constitutions.

Behind each case is a client who is harmed by the current caseloads. Excessive caseloads are proscribed by ethics rules because they inevitably cause harm. Overburdened attorneys cannot give each client the attention they need, cannot investigate in a timely manner, and cannot file the motions they must file in order to provide effective representation. Instead, they must triage cases, making difficult choices about which client has the most urgent needs; which faces the greatest harm if not tended to immediately. A justice system so burdened risks unreliability, denying all people who rely on it—victims, witnesses, defendants, and their families and communities—efficient, equal, and accurate justice.

The RAND study's empirical results, upon which the WSBA's Standards are based, provide evidence to support actions against public defenders' licenses if public defenders fail to adhere to an ethical caseload. Declining to pass these new standards would put public defenders in the impossible position of continuing to take cases in excess of what they can handle, despite empirical evidence showing that taking such cases is unethical. The ABA has recommended attorneys decline cases to maintain a workload they can handle.

I understand that certain counties, politicians, prosecutors, and judges are concerned about the financial impact of these new standards. But a fair and just criminal justice system requires that

everyone accused of a crime receive due process and effective representation. Just because public defense has been undervalued for decades, thrusting the cost of the behavioral health crisis onto the criminal justice system, does not mean that we should—or can afford to—continue undervaluing it.

For these reasons, I ask the Court to adopt the proposed caseload standards.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Calloway', with a long, sweeping horizontal line extending to the right.

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