From: OFFICE RECEPTIONIST, CLERK
To: Martinez, Jacquelynn
Subject: FW: CrR 3.1, CrRLJ 3.1, and JuCR 9.2
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From: Steven Lewis <smlewis@kitsap.gov>
Sent: Thursday, October 31, 2024 1:50 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: CrR 3.1, CrRLJ 3.1, and JuCR 9.2

I have managed my county's indigent defense system since January 2021. Prior to this I was an agency public defender for nearly a decade following more than five years as a contract public defender in a local Port Orchard law firm. These various experiences have all shaped my views concerning the challenges presented by and to public defense work in my county.

I am opposed to the revised standards on indigent defense as currently proposed. While there is undoubtedly much to like about many of the proposed revisions, two glaring deficiencies stand out to me as necessary to comment on and oppose.

The first is a failure to adequately account for trial work in either the case-weighting or the caseload standards. While I have great appreciation for much of the case-weighting system proposed in the revised standards, the omission of additional weighting for trial work in cases that go to trial is quite inexplicable to me. While it is certainly a truism that most cases do not go to trial, those that do create a tremendous amount of additional work for the attorney for which she should be credited in some fashion by these standards. Because these revisions fail in this regard, what they do instead is to essentially credit attorneys whose cases do not go to trial with more credit than they likely deserve while short-changing those attorneys whose cases do go to trial by not providing any additional credit for that time-consuming endeavor. This failure is mystifying to me, particularly when it could be remedied so easily by apportioning additional case credit pro rata for every day the case is in trial.

The second deficiency in the proposed revisions are the absurdly low caseload ceilings currently being proposed. These numbers appear ridiculous to the attorneys in my county for two reasons. The first is the underappreciated effects of the case-weighting mandated in the proposed revised standards. This alone will significantly reduce the caseloads of most public defenders. The second is just how low it is proposed that these ceilings go. I will explore each of these reasons in turn.

One of the primary salutary effects of the case-weighting system accompanying these revised standards is that the case-weighting alone will necessarily lower the number of cases that any attorney may handle in a given year. Before further lowering the caseload ceilings by more than 2/3, it would seem prudent to see just how much the case-weighting system alone will address the crushing caseloads that are currently being complained about in some counties. Based on our own case-weighted numbers in Kitsap County, which we have tracked since April 1st, the implementation of case-weighting alone will reduce many attorney's caseloads by more than 20%. For those attorneys who take the most serious felony cases, case-weighting will reduce the cases they are currently able to take by more than a third (reductions of 46%, 43%, 43%, 39%, 39%, and 30% respectively in the caseloads of our six most experienced felony public defenders currently practicing in Kitsap). These reductions are quite significant and should ameliorate to a great extent many of the problems complained about in other counties. To additionally drastically lower the caseload ceilings across the board without first observing whether these caseload reductions achieved by case-weighting alone are sufficient to address the cited problems seems reckless in the extreme. A more prudent approach would be to see what further reductions may be necessary following the implementation of the mandated case-weighting.

To reduce the case-weighted caseload ceilings to a low of 47 felony case-weights in 2027 is truly preposterous. It is one thing to ensure that public defense in some counties is not mission impossible. It is quite another to make it so unchallenging that most people who currently choose to do it leave in droves. While the revised standards seek to do the former, the ridiculously low ceilings being proposed will be much more likely accomplish the latter. This should not be hard for anyone to understand. 47 felony case-weights will mean many felony-level public defense attorneys will have fewer than 24 cases a year, or less than two cases per month. I daresay there are precious few who presently do this job who believe they are incapable of effectively handling more cases than that. For most attorneys, two cases per month is simply not enough work to do in any given year, particularly for ones that do not resolve via trial. By way of example, six sex offense cases count as 30 felony case-weights. A homicide case will count as 7 case-weights, for 37 on the year. Add in a couple of felony theft cases (1 x 2), a robbery case (1.5), a burglary case (1.5), and a couple of felony assaults with a firearm (1.5 x 2) and a violation of a court order case (1.5) and you have a maxed-out felony defender with 46.5 felony case-weights but only 14 cases to handle in a year. To mandate that from on high without any regard for the attorney's individual circumstances, including whether the cases are actually being tried or not, is not only foolhardy but will do a great disservice to those we are all supposed to care about the most – the clients with the constitutional right to counsel. For it is many of these constitutionally deserving clients who will ultimately not receive the benefit of counsel, not because there are no attorneys to handle their cases, but because a court rule has arbitrarily prevented their assignment notwithstanding the ability and willingness of the local attorneys to serve these clients' needs. That will be the real injustice that these revised standards will bring to counties like mine if the Court adopts them in their entirety as they are currently proposed. I respectfully beg you not to do so and, instead, impose the proposed case-weighting system with a directive to revisit the attorney caseload issue in a year or two to see how significantly the mandated case-weighting has reduced the problem in certain counties of excessive caseloads.

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