To Whom It May Concern:

I am writing this letter in opposition to the proposed caseload rule change. As background information, I have been involved in various aspects of the criminal justice system in Yakima County for 25 years--as a prosecutor, a defense attorney, and a judge. I originally was not going to comment, either for or against any change; in fact, many colleagues will not speak out for fear of retribution, which is a shame. Ultimately, what prompted me to write was a comment that occurred at a public defense meeting--a comment that demonstrates our fractured State. That comment was "who cares about the other side of the mountains (Eastern Washington)." Well, I do.

It is widely known that the proposed rule would hit this side of the mountains, especially more impoverished, rural areas, harder than other areas of the State. Quite simply, city and county revenue in smaller areas cannot compete with larger, more urban locations and the revenue that can be generated.

As to why any such standard is unattainable, I would first like to summarize what has previously been argued as any argument that the proposal is workable defies any logic. First, Washington is facing a huge attorney shortage. That is a fact. Some would even call it a "crisis." Perhaps. Employers in Yakima County, both criminal and civil, have been trying to find attorneys for years to no avail. There are simply a lot fewer attorneys to go around, and those available, typically do not settle into Eastern Washington unless there are ties to the local communities. Even if attorneys were willing to relocate, it typically takes excess compensation above and beyond wages that attract attorneys to the other side of the mountains.

Second, assuming that there are attorneys available for any jurisdiction, there is no funding mechanism in place to even fund the number of attorneys required to comply with the proposal. Neither the WSBA nor the Supreme Court has the authority to direct the legislature to pay the many millions of dollars necessary to even begin to fund the sheer number of attorneys necessary to comply with any rules.

Third, the proposal even goes beyond the hiring of attorneys. It calls for many investigators and social workers. No one has even addressed inherent issues with jurisdictions being able to comply with those demands based on shortages involving those professions and no funding.

Faced with those certainties, many jurisdictions will be forced to not charge out many crimes (including felonies and misdemeanors), if they had to comply with the rule. Property crimes—gone. Lower-level felonies—gone. Most misdemeanors—gone.

Strictly referring to misdemeanors, since only more important misdemeanors such as DUI's and Assaults could be charged, the rule would mean any full-time public defender can manage no more

than eighty cases per year—a little over six cases per month. That is because not only does the rule limit the numbers, it also further case weights those more "serious" misdemeanors. Compare that to any private criminal defense attorney handling those types of cases, with a caseload well in excess of that. Would the WSBA or the Court say that the attorney is ineffective or violating client's rights?

Let us call this as it is—it is an attempt by some to decriminalize Washington. In effect, to bypass the legislature. Lest it be forgotten, we have already experimented with allowing people to do as they will, and it did not go well. The logical conclusion is that the citizenry (which coincidentally, we are a part of), go largely unprotected by the local governments to which they look for protection.

Another possibility for jurisdictions could be that Courts will start using their inherent powers to appoint private attorneys, both civil and criminal to keep up with demands. One can only imagine the lawsuits that would be forthcoming, especially when considering that under the rules, those attorneys would be foreclosed from taking some private cases if accounting for their court-appointed duties.

Despite the issues it will cause, there has never been a demonstrated justification for implementing such a drastic change that has far reaching consequences. There are no studies or any arguments that individuals that are represented by court appointed counsel are being ineffectively represented—the very thing that the rule is being touted as needed to prevent.

Instead, proponents point to a nationwide study that demonstrates how overworked public defenders are from across the county. However, it is not a study--it is a self-serving survey from attorneys, asking them how much time is spent on cases. The time being reported is nowhere near the time that attorneys, both assigned and private, need to effectively represent an individual. As an example, the survey suggested that 15 hours are necessary to represent someone on a probation violation hearing. Anyone who practices criminal defense, assigned or private, knows that is a ridiculous proposition.

Proponents have also pointed out that the State was fine after the other caseload rule passed. Let's be clear that this rule far exceeds any requirements of the existing standards. This rule requires changes that are not even possible. Some have even argued that jurisdictions can just not charge out lower crimes. Putting aside that the argument provides support for the claim that the proposal is an attempt to decriminalize Washington, most areas do not have lower-level crimes to cu. That was done to comply with the first proposal.

Instead, the fact that any public defenders would advocate against this rule should cause the Court pause. After all, essentially this rule would create a huge demand for public defenders. More demand equals more pay. Ultimately, less work for more pay is the outcome, and who would say "not me."

It never made sense to apply any caseload rule to every single court-appointed defense attorney in every single part of the State. I cannot say whether some jurisdictions have public defense issues. I assume some do. I am also not suggesting by my comments that some public defenders in some areas do not feel overworked. There is a marked difference between felonies and misdemeanors. That is why many of the comments have dealt with felony caseloads, not misdemeanors.

However, the "one-size fits all" approach with this rule does not work. The first step is recognizing what, if any, the inherent problems are authorizing a "study" that provides information across all jurisdictions, and across all local practitioners. Frankly, some jurisdictions are doing well with public defense; others perhaps need help. The focus should not be on the number of cases, but instead on how many cases are active at any given point in time. As such, the rule oversimplifies any concerns over attorney workload.

Likewise, it never made any sense to apply it only to court assigned attorneys, leaving privately retained counsel to manage as many cases as they see fit. It always seemed very demeaning to those in public defense to put caps on his or her workloads, because they are not a "private" attorney. Singling out public defenders simply creates more divide as to how the public views retained counsel as opposed to assigned counsel and helped lead to attorneys not wanting to be involved in public defense. The Reality is that some attorneys (especially more experienced attorneys) can effectively represent numerous clients, while others cannot represent as many individuals, either through lack of experience or personal limitations. Those differences exist regardless of whether an attorney is assigned or retained.

Sincerely,

Troy J. Lee