

April 4, 2025

Washington Supreme Court
415 12th Ave. SW
Olympia, WA 98504

RE: Proposed Standards for Indigent Defense CrR 3.1, CrRLJ 3.1, and JuCR 9.2 (Appellate)



Washington

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Dear Clerk of the Supreme Court,

We ask the Supreme Court to adopt the proposed interim caseload standards for appellate public defenders. Appellate public defenders are critical to ensuring trials are fair. The Court of Appeals relies on appellate attorneys to raise legal errors that occurred at trial. Because of this reliance, the appellate defender may be the only person to review the entire record of some cases, and the only check on the fairness of the entire process. But the ability of practitioners to do this important work is severely constrained by the current standards. There is simply not enough time to do the work that is necessary on all the cases appellate defenders handle under the current standards and, as a result, “94% of [appellate defenders who responded to a survey regarding caseloads] stated they needed to triage or limit case activities because of insufficient time.”¹

This severe constraint harms appellate defenders, their clients, and the appropriate functioning of the appellate courts. Many problems in the current standards interfere with the ability of appellate defenders to effectively represent their clients. For example, the standards assign credits based on the number of pages in the record. Cases with a relatively small number of pages in the record but complex legal issues, can take many more hours than the standards assume.² Further, appellate attorneys do not feel that the standards accurately reflect time for reply-briefs, overlength-briefs, or cases that require additional communication with clients.³ This has resulted in situations where appellate defenders are “pleading impossibility” when faced with sanctions for late briefs because in their words:

It is not possible for me to work any harder or complete more briefing assignments than I already have. I have

¹Sunitha Anjilvel, Jason Schwarz, and Maialisa Vanyo, *Suggested Amendments, Standards for Indigent Defense Rules CrR 3.1/CrRLJ 3.1/JuCR 9.2 Stds.*, https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=6222.

²Appellate Defense Counsel’s Answer to Deputy Clerk’s Sanction of \$300 Filed for the Public Record at 3, *Washington v. Ward*, No. 58969-9-II (COA Div. II), https://www.courts.wa.gov/index.cfm?fa=controller.showEfiledDoc&fileName=589699Answer_Reply_to_Motion_20240923093410D2795667_3803.pdf.

³ *Id.*

constitutional and ethical duties to provide effective representation to my clients. In my current predicament, I simply am unable to meet these obligations while also complying with any semblance of the timelines provided for in the rules of appellate procedure. I never have been able to fulfill both basic obligations to clients and timeliness obligations to the Court because at almost all times during my career (with the exception of a brief lull during the Covid-19 pandemic), I have greatly exceeded what is a sane caseload based on the indigent defense standards.⁴

As a result, their clients and courts wait, while the attorneys suffer stress and lose faith in the court itself.⁵

Appellate public defenders, their clients, and the court deserve better than this. The only way to achieve that is to adopt these interim standards while a comprehensive caseload study is completed.

Thank you,

/s/ La Rond Baker

La Rond Baker, Legal Director

David Montes, Staff Attorney

American Civil Liberties Union of Washington

⁴ *Id.* at 6-7.

⁵ *Id.* at 10-12.

From: [David Montes](#)
To: [OFFICE RECEPTIONIST, CLERK](#)
Cc: [La Rond Baker](#)
Subject: Comment on CrR 3.1/CrRLJ 3.1/JuCR 9.2 - Standards for Indigent Defense (appellate caseloads)
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Good afternoon,

Attached is a comment from ACLU-WA on CrR 3.1/CrRLJ 3.1/JuCR 9.2 - Standards for Indigent Defense (appellate caseloads).

Thank you,

David Ventura Montes

Staff Attorney

Pronouns: he, him

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