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Subject: FW: Comments for CrR 3.1/CrRLJ 3.1/JuCR 9.2
Date: Tuesday, April 29, 2025 8:44:34 AM

From: Ariana Downing <ariana@washapp.org>
Sent: Monday, April 28, 2025 11:58 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments for CrR 3.1/CrRLJ 3.1/JuCR 9.2

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Dear Supreme Court Clerk,

I write in favor of the proposed changes to the indigent caseload standards for appellate public defenders. People who have lost their liberty, lost their children, or received mental health treatment against their will deserve an attorney who can devote the time needed to research and draft an effective appeal. Many of these folks come from marginalized communities, and the work of the indigent defense community has shown that without devoted, properly resourced attorneys, justice will never come for these folks. Current caseload levels make it unrealistic for even experienced, exceptional attorneys to provide competent representation in a timely fashion.

Courts of this State should also share our clients' interest in non-burnt-out attorneys: justice benefits from attorneys who have time to consult with colleagues about potential issues, who have time to properly research the issues, including secondary sources, who have time to edit briefs to fix typos, passive tense, and other inefficient or confusing writing, and who have the time to spend with the record to knowledgeably and accurately cite it in briefs and oral argument. Indigent criminal defendant deserve this care just as greatly as those who can afford a private attorney. This is just not possible with the current standards, which are 1.5x the national standard.

It is troubling to read the comment from the Court of Appeals and again see judges refer to reply briefs and petitions for review as "optional." An appellate counsel's duty to their client requires that counsel draft a reply brief to correct faulty or mistaken arguments, errors in record citations, or other problems in the respondent's brief. If we have the time to properly research and brief the issues in the opening brief, we have brought the best issues, most deserving of the reviewing court's attention. We have spent the time to accurately cite the record. And we will notice when the respondent gets it wrong. In those cases, we have a duty to our clients and the courts of this State to ensure that the court has received our best, most zealous advocacy for our clients. What message

does the reviewing court receive when appellant's counsel fails to file a reply? At least subliminally, it sends the message that the appellant's arguments were faulty and wrong for all the reasons that the respondent claimed in their brief. An appellant's attorney has a duty to do more than that, even if the Court of Appeals ultimately finds the appellant's arguments unavailing. That doesn't mean that appellant was wrong to raise the issues. Indeed, some issues, like the constitutionality of the unlawful possession of controlled substances crime that was finally found unconstitutional in *State v. Blake*, need decades of advocacy before the courts gain the insight and courage to set the law right. Caseload expectations for an appellate attorney should assume that reply briefs and petitions for review are necessary, not "optional."

So when judges refer to reply briefs and petitions for review from indigent appellants as optional, it is honestly troubling. This belief reveals that the courts do not value providing poor, marginalized folks with zealous representation. It reveals institutionalist bias, skeptical of the objections counsel for indigent appellants must bring. Effective advocacy for indigent folks is also more than just doing a good job for each client. It is also shining a light on the parts of our justice system where justice has gone dark. *Monday, Luthi, Blake, Saintcalle, Gregory* and more—these cases find their beginnings in humble PD offices with overworked counsel. What if those attorneys didn't file reply briefs or petitions for review? And in what other areas does injustice still lurk because the attorneys haven't been able to competently brief the issues?

The proposed caseload work study is also wise. It will show, objectively, what an appropriate caseload standard for a fulltime attorney who doesn't have to devote most nights and weekends to their work to prepare the briefs that their indigent clients deserve. As this State is discovering, there aren't enough lawyers to continue to churn them up by overworking them for a few years until they've burnt out. So for all of these reasons, I hope that you will pass the proposed changes to the caseload standards.

Thank you for carefully considering my comments.

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