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Casey Grannis
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April 30, 2025

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

Re: Comment for CrR 3.1/CrRLJ 3.1/JuCR 9.2 – Standards for Indigent Defense (appellate caseloads)

Dear Supreme Court Justices:

I support adoption of the interim appellate caseload standard of 25 cases per year, recommended by the Council on Public Defense and Washington State Bar Association.

I have worked as a full-time appellate attorney representing indigent clients for almost 20 years at Nielsen Koch & Grannis, serving as a managing partner these past few years. During that time, it has been an honor to work alongside my colleagues — hardworking attorneys doing their best to provide quality legal representation for all their clients under trying circumstances.

Appellate defenders provide a vital public service. Appellate courts need them to ensure the integrity of the justice system. Clients, all of whom are poor, many of whom are among the most marginalized and vulnerable members of society, rely on them as protection against unlawful abuses of power.

The job is difficult. There's no way around it. Every attorney who has done this work full time for any substantial period knows this to be true. Some burn out, ground down by the demands of the job. Among those who endure, the threat of burnout remains a brooding presence. There are multiple reasons for this. The driving factor, though, is the untenable caseload imposed on appellate defenders.

I know from personal experience. When I first started doing this work, it was all I could do to keep my head above water, and barely at that. This was around the time when the current caseload standard of 36 cases per year was first implemented. I was a new appellate attorney, so I did not carry a full caseload in the beginning. As I gained experience and worked up to a full caseload, I worked relentlessly, morning, noon and night, weekdays and weekends, foregoing time off, working instead of spending time with family and friends, just trying to keep up.

I thought as I gained experience and became more efficient that the workload would become more manageable, that I would find some breathing room. This has not come to pass. Nearly 20 years on, having litigated hundreds of appeals, the caseload is still like a boot on the neck of this veteran attorney, never easing off, its pressure incrementally increasing. I tell my spouse sorry, I can't do that, because I need to do *this*. I want to get some exercise, but there is a brief due today, or tomorrow, or the next day, and the Court of Appeals is threatening to sanction me if I don't file it by the deadline. I want to spend time with my child because those opportunities, once gone, are never coming back. I want to, but the deadlines, one after another after another, are always looming and demand attention.

There is a human cost to the current caseload. Hopelessness. Mental illness. Poor health. Damaged relationships with friends and family.

The current caseload standard of 36 new cases per year has always been too high. It was too high the day it was implemented. Developments since then have exacerbated the problem, but did not create it.

There is no sound basis for the current standard of 36 cases per year and there never was. Before the 36-case standard was implemented in 2007, Washington followed the national standard of 25 cases per year. The abrupt increase from 25 to 36 cases was based on predictions that improvements in technology would make appellate work faster. There was no study done to justify the increase. I am unaware of what technological improvements were envisioned as a panacea. Regardless, the prediction that technological improvements justified a nearly 1/3 increase in appellate caseload has aged poorly. The collective experience of myself and the attorneys in my firm, some of whom have been doing this work for decades, is that technology has in no way saved so much time that it could even begin to account for an increase of 11 cases per year in the caseload.

Meanwhile, the 2016 amendment to GR 14.1, permitting citation to unpublished opinions, has contributed to the time needed to work on a case. Citation to an unpublished case can make or break an appeal where there is no on-point authority, which is often the situation. Any diligent appellate defender must now research 10+ years of unpublished case law. This is a new development since the current caseload standard took effect. In terms of time needed to work an appeal, the time needed to research issues comprises a big chunk, and as the body of citable unpublished case law continues to grow, the time needed to research that body of law continues to grow alongside.

Attention must also be given to what happens when a new attorney starts doing this work. The current 36-case standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. The standard dictates that, if attorneys do not have significant appellate experience, the caseload should be accordingly reduced. The result for a high-volume, multiple-attorney firm like NKG is that new attorneys within the firm receive a reduced caseload as they are trained and get up to speed. There is a displacement effect when this happens. New cases are constantly pouring in. The more experienced attorneys must handle additional cases to pick up the slack, contributing to an already onerous caseload. Relatedly, the standard does not account for what happens when an attorney, crushed by the caseload, leaves. The departing attorney's cases are offloaded onto the attorneys who remain. Hiring a new, qualified attorney takes time, and even when hired, the new attorney cannot handle a full caseload. Those cases aren't going anywhere. They must be staffed.

The attorney suffers, the client suffers, and the system suffers when an attorney has too many cases. Records do not get thoroughly reviewed. Legal research is artificially cut short. Briefs are not prepared and edited as they should be. This is cerebral work. Reflection is an important part of being a competent appellate attorney. There is insufficient time to think about things. Avenues of viable argument are overlooked. On top of it all is the severe mental strain of worrying that you missed something important.

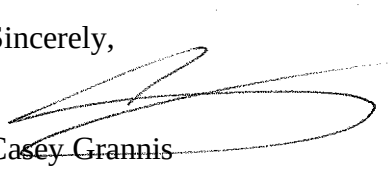
One sign that the caseload is too high is the number and length of extensions that must be sought to file a brief. Appellate attorneys must have sufficient time to provide quality advocacy in accordance with constitutional requirements and ethical standards. Unlike their privately retained counterparts, assigned appellate attorneys do not get to choose cases. The case is assigned, and the assigned attorney deals with it. Cases back up.

Attorneys in my office, and appellate defenders elsewhere, get sanctioned for extensions. Sanctioned for doing their job. And even when sanctions are not actually imposed, the threat of sanctions is a constant drumbeat in our ears. The effect is to destroy morale. Beasts of burden can be whipped for only so long before they break. This punitive approach is shortsighted and accomplishes nothing other than driving attorneys out, making the ones who stick around miserable, and dissuading new attorneys from joining and staying in the field. Multiple extensions per case and the resulting sanctions are symptoms that the system is sick.

What is needed is strength of vision. That starts with reducing the caseload standard to a manageable level while the long-term study is underway. Any suggestion that the solution is for appellate defenders to simply work harder, better, faster under the current standard withers in light of the lived experience of quality defenders who have devoted years of their life to the job and are already working beyond reasonable capacity.

I stand with my colleagues in asking that this Court adopt the interim caseload standard.

Sincerely,



Casey Grannis
Attorney at Law

From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Appellate Caseload Comment - Casey Grannis
Date: Wednesday, April 30, 2025 11:42:51 AM
Attachments: caseload comment - grannis.pdf

From: Casey Grannis <grannisc@nwattorney.net>
Sent: Wednesday, April 30, 2025 11:37 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Appellate Caseload Comment - Casey Grannis

Dear Supreme Court,

I submit the attached comment to the proposed rule change to

- CrR 3.1/CrRLJ 3.1/JuCR 9.2 - Standards for Indigent Defense (appellate caseloads)

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