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April 30, 2025

Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Re: Proposed Amendments To Appellate Caseload Standards

Dear Justices of the Supreme Court:

I have had the honor of serving as a public defender for 33 years, representing over 1,000 clients on appeal in Washington, Alaska, and the federal courts. I have witnessed firsthand the damaging impact of raising the caseload standard to 36 case credits when combined with an increasing number of cases involving serious charges, time-critical filings, large records, and/or necessary supplemental investigation. Because the current situation prevents sustainable hiring and retention of attorneys qualified to competently handle these matters, I strongly support this Court's adoption of the interim caseload standard of 25 case credits per year.

Public defenders have long understood that handling indigent appeals is challenging. The workload is substantial, the compensation insufficient, and client relations sometimes difficult. We knew this when we dedicated ourselves to the cause. But the impact of increased caseloads beginning in 2007, combined with several changed circumstances the past decade, have converted "challenging" to "unsustainable." Our firm discusses these changes in more detail in a separate letter. To summarize, during the past 10 years, increased assignments in homicide cases, increased assignments in time-consuming personal restraint petitions (which often require additional factual investigation), increased assignments in accelerated dependency/termination cases, and increased assignments in cases with a verbatim report of proceedings exceeding 1,000 pages have created an environment hostile to attracting and retaining qualified lawyers to appellate practice. This jeopardizes Washington's constitutional promise of effective representation on appeal.

While we do not keep formal records on the subject, the past two times our firm advertised an available position (2023 and 2024), the number of applicants was well below what we historically received. It is difficult to know the impact of work overload on these numbers, but the subject is now frequently highlighted in the media and legal

circles. I do know that we lost a top candidate in 2024 after providing her an honest assessment of the current situation. Our attorneys now work excessively long hours, often including evenings and weekends; they regularly find it necessary to seek multiple extensions of time; Division Two of the Court of Appeals imposes monetary sanctions for delays necessary to meet our ethical and constitutional obligations; and stress is taking a toll on defenders' professional and personal lives. I understand why our excellent applicant chose not to join us. Without a reduction in caseloads, future candidates will choose the same.

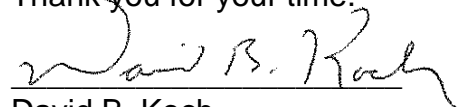
Examining the tenure of our firm's current attorneys, one could easily conclude that we are overstating the situation. If truly dire, why would so many attorneys stay for so long? But other offices have not been so fortunate. And while our attorneys' fortitude is testament to their character and commitment to the constitutional rights of marginalized and vulnerable human beings, foundational fissures are growing. In recent years, I have seen unhappy, anxiety-ridden, and overwhelmed attorneys strain under the great weight of current caseloads to maintain quality representation for our clients.

Most recently, we lost Kevin March, a brilliant, award-winning attorney and former law clerk to Justice Charles Wiggins. After Kevin joined NKG in 2014, he frequently expressed a desire to make this work his career. By October of 2024, he was finished. With Kevin's permission, I quote from his resignation letter:

I appreciate the opportunity to have worked with you for the last 11 years. But, particularly over the last year, I realize that this work is no longer sustainable for me. I have never been more exhausted in my life, I have been working 60- to 80-hour weeks since April without exception . . . and I do not believe I can continue to provide quality representation to my clients in this system in which I just continue to get further and further behind. . . . It's been incredibly difficult and painful to make this decision, as I have always been committed to this work, but it is the one I must make for my health and wellbeing.

Without adoption of the interim caseload standard, the system will continue to lose talented candidates and veteran appellate defenders. Adopting that standard will attract and retain these attorneys, ensuring that Washington continues to adequately protect the rights of all people facing a loss of liberty or family. I encourage this Court to adopt the interim standard.

Thank you for your time.

A handwritten signature in dark ink, appearing to read "David B. Koch", written over a horizontal line.

David B. Koch
Nielsen Koch & Grannis, PLLC

From: [OFFICE RECEPTIONIST, CLERK](#)
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Subject: FW: Letter Addressing Proposed Interim Caseload Standard For Indigent Appeals
Date: Wednesday, April 30, 2025 9:00:13 AM
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From: David Koch <KochD@nwattorney.net>
Sent: Wednesday, April 30, 2025 8:59 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Letter Addressing Proposed Interim Caseload Standard For Indigent Appeals

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Attached is my letter commenting on the subject. Thank you.

David Koch

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