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April 29, 2025

Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
Sent via email to: supreme@courts.wa.gov

Re: Proposed Amendments To Appellate Caseload Standards

Dear Justices of the Supreme Court:

I am the founding partner of Nielsen Koch & Grannis and its predecessor firms. These firms have been handling indigent appeals since 1993. Before that I was an attorney and subsequently the Assistant Director with the Washington Appellate Defender Association. It also represented indigent clients on appeal. I have represented indigent appellants as a public defender for over 40 years. In that time, I have witnessed several changes in appellate public defense in Washington State, including the adoption of 2007 caseload standard. I freely admit I may be deluding myself but I believe my background and experience make me uniquely positioned to comment on the current proposed interim caseload standard for indigent appeals. I urge this Court to adopt the interim caseload standard of 25 case credits per attorney per year.

Our work is demanding, the compensation inadequate, and for several reasons client communication is difficult. That has not changed in the over 40 years I have been doing this work. What has changed is the workload. What had been a manageable workload is no longer. Our firm and its attorneys address the reasons for that and supply the supporting data in separate comments. I will not bore the Court with repeating that content. I instead confine my comments to my experience and observations from my decades' long experience as an appellate public defender and manager of public defense law firms.

I am not being hyperbolic when I state what should be obvious; that indigent appellate defense is on the precipice of a crisis. The reason is not the historically inadequate attorney compensation or challenging nature of the work. Those of us who do this work, me included, accept the low pay and embrace the challenge because we are passionately committed to protecting the constitutional rights of those who sit on the

financial margin of our society, and we believe our criminal justice system must work for everyone to fulfill its oft stated promise of "justice for all." The reason for the looming crises is the crushing, time draining, and soul killing workload.

When I started doing this work, there were no personal computers and no internet based legal research sites. Trekking to the law library to do research and handwriting briefs that were passed on to a typist was common. Activities that everyone regardless of the work they do should be entitled to enjoy, like spending quality time with their children, families and friends and even taking the occasional vacation to recharge, were nonetheless possible. That is no longer the case. The primary reason is the current caseloads demand attorneys work well in excess of the typical 40 hour work week. In my experience, attorneys with the passion and skills to do this work are still willing to accept the historically low pay and the difficulty of the work. For the first time in my decades long experience, I am witnessing our attorneys suffer from health issues related to stress, anxiety and the inability to engage in those activities I mention. Because of that I am experiencing something new. There are now too few attorneys willing to pick up the shields and swords that I and others of my generation are laying down because we are ending our careers to continue the battle of protecting the legal rights of the poor. It is nothing short of folly to labor under the belief that an attorney is willing to sacrifice what this work now requires---their health and time. Without those dedicated and skilled attorneys our justice system will quickly and inevitably become a system for "just us" that can afford it.

I know that there will be appellate court judges and prosecuting attorneys who will question the need to adopt the proposed standards. But ask yourselves who but those doing this work are in the best position to know the personal and systemic consequences of maintaining the current caseload standards? You know the answer.

All of us in the legal profession, including judges, should constantly remind ourselves of the truism uttered by attorney and law professor Bryan Stevenson: "The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned." The members of this Court have it within their power to heed those words and take a small but necessary step to help ensure that the promise of justice for all is not relegated to a hoary and meaningless platitude because of the impossibility of recruiting and maintaining attorneys to do this work. That step is to adopt the proposed interim caseload standard, which you can and should do.

Thank you,

A handwritten signature in cursive script, appearing to read "Eric Nielsen".

Eric Nielsen, WSBA No. 12773
Nielsen Koch & Grannis, PLLC

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Attached please find my comments on the interim caseload standards for indigent defense.

Thank you

Eric Nielsen
WSBA No. 12773