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April 30, 2025

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

Via email: supreme@courts.wa.gov

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

Dear Honorable Justices:

I ask this Court to adopt the Washington State Bar Association's (WSBA) proposed amendments to the standards for indigent defense which would reduce the appellate public defender caseload standard from 36 to 25 briefs per attorney per year. In 2007 Washington State rejected nationally accepted ethical standards for appellate counsel, in favor of the current standard that is almost 150% of the national standard. Adoption of the proposed interim caseload standard would align Washington State with nationally accepted ethical standards and more accurately account for the appellate work necessary to adequately represent a person charged with a crime, facing loss of liberty, or deprivation of other constitutionally protected rights in 2025.

For nearly 17 years I have worked as an attorney with the law firm Nielsen Koch & Grannis. Our office is one of only two large firms that contracts with the Office of Public Defense (OPD) to provide indigent appellate representation to criminal and civil litigants. In this role, I have represented adult and juvenile criminal defendants, personal restraint petitioners, people involuntarily committed for mental health disorders, and those involved in parental rights cases.

The work is specialized, and it has become increasingly more difficult in a myriad of ways. Forensic and technological advancements have complicated criminal cases. Legal issues related to such advancements are now often litigated before trial, increasing the number of filed pleadings and transcript pages appellate attorneys must review. Competent representation also often requires appellate public defenders to obtain and review exhibits, including video and audio recordings introduced during trial.

The current caseload standards do not account for either the often-voluminous trial court documents or the pretrial and/or trial exhibits. Rather, the current standards only account for transcripts, and “assumes” “an average length of 350 pages.” Standard 3.4. Data from our office from the past decade, however, demonstrates how appellate cases have consistently increased in volume, severity, and required effort:

- **Transcript Length:** Current standards assume 350 pages per case, but our data shows an average of nearly 400 pages, with more cases exceeding 1,000 pages.
- **Murder Cases:** Assignments have nearly doubled since 2015/2016 and more than tripled from 2020 to 2023, outpacing even local homicide trends.
- **Parental Rights Cases:** These cases continue to rise, often requiring urgent prioritization pursuant to the Rules of Appellate Procedure and involving voluminous exhibits not reflected in caseload transcript standards.
- **Personal Restraint Petitions (PRPs):** Assignments have more than doubled since 2015, with a significant increase after 2020, requiring extensive time and investigation beyond typical appeals.

The current caseload standards also fail to account for the considerable time appellate public defenders must spend preparing reply briefs, motions for reconsideration, and petitions for review. Such “discretionary” pleadings are not included within the current 36 briefs per year standard. Still, they are often necessary because they are in the best interest of the client, advance the goals of representation, are necessary to preserve arguments for review, or exhaust claims for purposes of federal review.

To my considerable alarm and scores of other appellate public defenders, I was recently monetarily sanctioned by the Court of Appeals for spending time filing these types of pleadings at the perceived expense of the 36 opening briefs dictated by the current caseload standards. As the Court of Appeals reasoned, “[t]his court notes that many of the briefs identified by Counsel are briefs that he was not required to file by the Rules of Appellate Procedure—reply briefs, petitions for discretionary review, etc.” See PRP of Randy Smith, No. 58649-5-II, Order Denying Motion to Modify Clerk’s Ruling (Aug. 28, 2024). Unless and until the current caseload standards are reduced, appellate public defenders will continue to operate at risk of punishment for the type of zealous advocacy mandated by the Rules of Professional Conduct, WSBA Guidelines for Appointed Counsel in Indigent Appeals, and the state and federal constitutions.

The demands on appellate public defenders are not limited to transcript length and court filings. Unlike appellate prosecutors, appellate public defenders must also spend time communicating with each client. The clients that we represent are among the most marginalized members of our community: they are poor, many are people of color, many do not speak English as a first language, many lack education, and increasingly they suffer from behavioral health and substance abuse disorders. As our clients’ needs have continuously increased, so too has the time we must invest to ensure effective communication with each client. The current caseload standards, however, do not account for the increasingly vast and unique roles we must assume to ensure this effective communication, including counselor, translator, investigator, social worker, and therapist.

The present demands on appellate public defenders are real. The current caseloads for indigent appeals far exceed anything a private appellate attorney would ever contemplate.

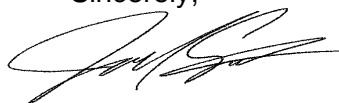
Appellate public defenders are faced with current caseload standards which are contrary to national ethical norms, do not contemplate time spent on necessary “discretionary” pleadings, and fail to account for persistent increases in case size, type, and complexity.

Despite all these increasing challenges, I have remained in the increasingly difficult role of an appellate public defender for the last 16+ years because I feel strongly about the criminal justice system, the dedicated people I work with, and most importantly, the people I represent. As an appellate public defender, I'm providing an invaluable service and an important check and balance on the criminal justice system in this State. But the current caseload standards are untenable. I work an average of 60 hours per week, including most weekends and many holidays. I have had to forego vacations and leisure time with family and friends because I often cannot spare the time given the exceptionally high current indigent caseload standards.

Because of the current caseloads, I have witnessed many highly qualified appellate attorneys driven out of the profession in the last five years, including several from my firm. These are dedicated, brilliant, empathetic attorneys who have years of appellate experience. Replacing them is difficult and time-consuming. Many qualified attorneys do not want to work in public defense because of the unmanageable workloads. Moreover, time constraints created by the current caseloads prevent current appellate public defenders from effectively training new hires who are often recently licensed attorneys. Indeed, my firm has, for years, intended to begin an internship for law students interested in appellate public defense, but because of the current caseload standards this is not feasible because our attorneys just do not have the time to manage their own caseloads and supervise and train law students.

Appellate public defense has changed dramatically since the current caseload standards were implemented in 2007. The standards for indigent defense must also change to reflect that 36 opening briefs per year per attorney is not feasible. Please adopt the proposed amendments to the appellate standards for indigent defense.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jared B. Steed', with a stylized, flowing script.

Jared B. Steed
Attorney at Law
WSBA No. 40635

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Farino, Amber](#)
Cc: [Ward, David](#)
Subject: FW: Comments on Proposed Amendments to CrR 3.1/CrRLJ 3.1/JuCR 9.2 Standards for Indigent Defense Re: Appellate Caseloads
Date: Wednesday, April 30, 2025 8:20:43 AM
Attachments: [Jared B. Steed Proposed Appellate Caseload Comments.pdf](#)

From: Jared Steed <SteedJ@nwattorney.net>
Sent: Wednesday, April 30, 2025 6:43 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on Proposed Amendments to CrR 3.1/CrRLJ 3.1/JuCR 9.2 Standards for Indigent Defense Re: Appellate Caseloads

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Good Morning,

Please find attached my comments on the proposed amendments to CrR 3.1, CrRLJ 3.2, and JuCR 9.2 regarding appellate caseloads standards for indigent defense.

Thank you,

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Jared B. Steed
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