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April 28, 2025

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

RE: Proposed Standards for Indigent Defense CrR 3.1, CrRLJ 3.1, and JuCR 9.2 (Appellate)

Dear Clerk of the Supreme Court,

I am writing in support of the proposed amendments to the interim caselaw standards for appellate indigent defense. I fully support the proposal to reduce the standard appellate caseload from 36 to 25 cases per year.

I have worked in indigent appellate defense exclusively since 2008. During that time, I have seen positive change, as appellate standards have become more client centered. However, I have also seen a steady increase in workload.

It is the nature of appellate work to be unpredictable. Sometimes, the length of the trial transcript roughly predicts the overall complexity and difficulty of the case, and sometimes it does not. A lengthy, but well-litigated trial may sometimes result in very few cognizable appellate issues, leading to less work in the research and brief-writing stage of the case. On the other hand, a short transcript may raise novel or complex issues requiring extensive research and consultation that could not have been predicted. Client communication is another unpredictable factor that has the potential to greatly increase the amount of time a case requires. In addition to identifying and briefing appellate issues, many cases require lengthy and detailed explanations to a client about why their favorite issues will not be raised in the attorney's briefing. Substantial research may be necessary when clients suggest entirely novel legal theories. These conversations are critical to establishing a real attorney-client relationship and ensuring the client can make knowing and intelligent decisions about the case.

For most of the past 17 years, I have been able to manage my caseload. Over time, more challenging or time-consuming cases were offset by less challenging ones. If I was behind one month - due to illness, vacation, or a particularly time-

consuming case – over the next few months, I was able to catch up. Unfortunately, that is no longer true.

Initially, I blamed my personal backlog on the time I spent writing my first petition for certiorari to the United States Supreme Court. I represented one of three brothers convicted for multiple homicides that took place in the "jungle" homeless encampment under Interstate 5 in Seattle. My client was 15 at the time and tried as an adult. He was sentenced to 40 years in prison. My briefing raised a question of first impression under the Confrontation Clause of the United States Constitution. Although the chances of success were slim, I determined that my ethical and moral duties to my young client demanded that I not simply give up so long as legal options for review remained open to him.

Over the course of November and December 2022, I spent approximately 54 hours on this petition. Those were hours that I could not spend on the new cases being assigned to me during those months. As a result, by the end of January 2023, I had five cases in which I had not yet filed the opening brief. This time, however, I was not able to recover from the backlog. Six months later, in June 2023, I still had five unbriefed cases. (This persistent backlog arose before the 2023-2024 fiscal year, when, due to a computer glitch at the Office of Public Defense, our office was inundated with more than a hundred cases beyond even the current caseload standards.)

When I began this work, my caseload was three cases per month, regardless of length, and it was manageable. Now, the caseload is three case *credits* per month, weighted for an average of 350 pages of transcripts per credit. Theoretically, this caseload should be more manageable now than when I started in 2008, particularly in light of my increased skill and experience since then. But the opposite is true. I attribute this to numerous factors.

First, we have more cases with lengthy transcripts. The current standards assume 350 pages per case, but our data shows an average of nearer to 400 pages, with more cases exceeding 1,000 pages.

Second, I have seen an increase in clients who exercised their constitutional right to self-representation at trial. In my experience, this not only increases the length of the trial transcripts, but it also makes them more challenging to read because so much of the legal argument is made by a layperson with limited understanding of legal concepts and terminology. It also increases the amount of time spent explaining the attorney's legal analysis and why it may differ from the client's.

Third, there has been an increase in murder cases. Assignments to our office of murder cases have nearly doubled since 2015/2016 and more than tripled from 2020 to 2023, outpacing even local homicide trends.

Fourth, there has been an increase in parental rights cases. These cases often require prioritization pursuant to the Rules of Appellate Procedure for accelerated review, pushing other cases to the back burner. They also often involve voluminous exhibits not reflected in caseload transcript standards. For example, I recently worked on a parental rights case with 1,019 pages of transcripts, equating to 2 case credits.

However, the case also included nearly 300 exhibits. In a typical criminal case, most exhibits would be physical objects, photographs, or audio/video recordings. But in a parental rights case, exhibits are frequently documents such as visitation reports or psychological evaluations, i.e., lengthy, single-spaced documents, containing detailed information that must be combed through.

Fifth, we have seen an increase in personal restraint petitions. Assignments have more than doubled since 2015, with a significant increase after 2020, requiring extensive time and investigation beyond typical appeals.

These increases do not appear to be temporary. The data indicates steady and ongoing increases in the percentage of our cases with lengthy transcripts, very serious charges, parental rights cases, and personal restraint petitions. The prior caseload standards do not reflect the amount of time these cases require.

The toll that this increase in workload has taken on me personally and on the attorneys in my office is significant. One valued co-worker has resigned due to burnout. Others, including myself, struggle against the demoralizing effect of being frequently threatened with monetary sanctions for being unable to finish our work on time.

I have never ignored or disrespected the Court's deadlines. In every single case I have, on or before the deadline, filed a motion to extend time, explaining why I needed more time. Yet in late 2024, for the first time in my 17 years doing this work, I was sanctioned by the Court of Appeals for not completing a brief on time. Our firm was ordered to pay a $250 fine. While that was the only time I was actually sanctioned, I cannot count the number of times recently that I have received rulings that *threatened* to impose sanctions.

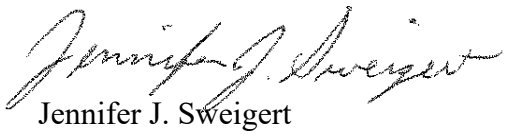
The threat of sanctions that results from the backlog is problematic in at least three respects. First, it is obviously demoralizing to be forced to beg for the time we need to do our jobs properly. Second, the threat of being sanctioned has led us to file more and more detailed motions in support of requests for extensions. These detailed motions take time away from working on our clients' cases and make the entire appellate process take longer. Third, the threat of sanctions forces us to make different decisions about what case to work on in a given day. Reassessing priorities and allocating our time accordingly is a normal part of our work. But every time we have to interrupt our work on one case and switch to another, there is a decrease in efficiency as the brain re-orients to the new task.

I believe the reason I have been able to avoid the burnout infecting many in our profession is that I have maintained largely consistent working hours throughout my career, rarely working late into the night or through the weekend. If I had extended my work week significantly, I might have been able to work through some of the backlog that has arisen in recent years. However, I would have had to give up my exercise routine, my sleep, and/or my time with my family. Every profession has times when personal time must be sacrificed to meet pressing deadlines or a glut of work. This is to be expected. But the occasional emergency should not be the norm.

My co-workers and I work very hard to give our indigent clients the vigorous, zealous, high-quality representation to which they are entitled. And I believe we are succeeding. However, the status quo is not sustainable. Without this adjustment to the caseload standards, I believe we will see more excellent appellate attorneys quitting. And those who remain will be forced to give some cases and clients less than their due.

Thank you for considering these comments.

Sincerely,



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From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Subject: FW: comment on proposed standards for indigent defense
Date: Monday, April 28, 2025 1:53:33 PM
Attachments: caseload comment.pdf

From: Jennifer Sweigert <SweigertJ@nwattorney.net>
Sent: Monday, April 28, 2025 1:52 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: comment on proposed standards for indigent defense

Attached please find my comments on the proposed amendments to CrR 3.1, CrRLJ 3.2, and JuCR 9.2 regarding appellate caseload standards for indigent defense.

Thank you,

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