From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Subject: FW: Proposed Standards for Indigent Defense CrR 3.1, CrRLJ 3.1, and JuCR 9.2 (Appellate)
Date: Wednesday, April 30, 2025 8:20:01 AM

From: Jennifer Winkler <WinklerJ@nwattorney.net>
Sent: Wednesday, April 30, 2025 6:37 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Re: Proposed Standards for Indigent Defense CrR 3.1, CrRLJ 3.1, and JuCR 9.2 (Appellate)

Dear Clerk of the Supreme Court:

As an appellate defender of 20 years, I support the proposed changes to the Standards for Indigent Defense under rules CrR 3.1, CrRLJ 3.1 & JuC 9.2.

I join other commenters from Nielsen, Koch & Grannis in emphasizing that review of our internal data shows that in recent years, representation in individual cases has become more onerous based on the increasing length of records on appeal—which are not always reflected in transcript length, the sole current measure—as well as the changing nature of the cases we are assigned.

The current indigent defense standards fail to account for the growing complexity and workload demands on the lawyers handling such cases. Over the past decade, assigned cases have consistently increased in volume of record, severity, and the hours needed to ethically represent clients in such cases.

- **Transcript Length**: Current standards assume 350 pages per case, but our data shows an average of 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. They often involve voluminous exhibits and lengthy superior court files not reflected in caseload transcript standards.

- **Personal Restraint Petitions (PRPs)**: Assignments have more than doubled

since 2015, with a significant increase after 2020, frequently requiring extensive time and investigation beyond typical appeals.

These trends highlight the need to update indigent defense standards to reflect the actual workload and case complexity that lawyers in this field now face.

I write separately, however, to emphasize my observations as to something more qualitative than quantitative—the increasing burden on lawyers related to client needs. I also want to remind stakeholders in this system that the effect of *not* meeting such needs has tremendous potential to undermine trust in the justice system, which not all hold dear, but most find necessary.

Faith in government cannot be taken for granted—indeed, it is evaporating as I write this. Washington state courts must continue to earn the trust of the governed. As we see now with more clarity, such trust is not a given.

My clients often understand that their appellate public defender is the *last* chance for them to voice their concerns about their circumstances and about the system. Some clients' and their families' stories even lead me to believe that we are their *first* chance to voice certain concerns.

As noted, I have worked almost exclusively with indigent clients on appeal for 20 years. That means I have represented people from several different walks of life. It is clear to me that many of them did not expect themselves to be in a position to be represented by an appellate public defender. They did not expect to be arrested, to struggle with caring for their children, or to experience mental illness and be confined for it.

Increasingly, I have also had close interactions with these client's concerned and loving family members. These are mothers, brothers, nephews, fiancées, nieces, and stepchildren. Frequently these family members do not understand what is happening to their loved one. When they don't understand, because schools don't teach this, they show up on our doorstep. These interactions, which are often born of crisis, are not reflected in transcript length.

Clients and their families increasingly present as overwhelmed. This is true when the client and their family speak English. But I am bilingual (Spanish is my second language) and I have represented several monolingual Spanish speaking clients, with the number peaking in 2024. Such representation is even more time-consuming. These clients and their families often have extraordinary needs, legal and otherwise. For some, I have the sense that getting answers to even basic questions has been an ordeal.

While appellate defenders face this ocean of unmet needs, the current case load standards force work at a breakneck pace. I will not soften it: People working in my field feel constantly under attack, including by the same appellate courts who appoint us. This takes a psychological toll, adding to the psychological toll from the ocean of unmet needs we encounter, and of the work itself.

More on this breakneck pace: Because we are not wizards and cannot make days longer to squeeze more time out of them, the current standards force appellate practitioners to compromise.

Appellate defenders are law school-trained and rule-bound to pursue every possible legal challenge to achieve a fair result for our clients. The rules of professional conduct tell us we must zealously pursue these challenges, often resulting in multiple briefing events in the same case. For example, a motion for discretionary review of a trial court decision—which may rest on a "small" transcript but thousands of pages of court filings—sometimes requires new and refreshed briefing at *three* different appellate levels. These briefing obligations can occur over the course of several months, requiring appellate practitioners to relearn the facts and issues of a case over and over.

If appellate defenders must pursue every potentially meritorious legal challenge, and ethically we must, the need to compromise creeps into other areas. We can't take a client's call because of a briefing or petition deadline. And we can't call the client back, because we can't directly call clients in prison. A fiancée's or mother's call is not returned; we'd rather talk to the client, whatever important information the fiancée or mother might convey. A client letter gets a cursory written response. This feels bad to us, and it feels bad to everyone. And maybe we miss an issue that more careful conversation with a client, or family member, would have revealed. But if we don't force the breakneck pace, the court of appeals may pursue monetary sanctions against us, as though we were children in need of correction, rather than adult co-participants doing our best to meet competing needs.

Of the co-participants in the appellate justice system that we operate in—among judges and court staff and prosecutors—appellate defenders disproportionately shoulder the consequences of the vast unmet needs of our clients and their families. These clients have been deprived of not just legal resources but of housing, medical, educational, and emotional resources. We absorb the consequences of deprivation on behalf of the courts and other co-participants. Current standards fail to acknowledge this.

The current case load standards require that cases (and clients, and families) be hustled through the system. But hustling cases through the system fosters distrust in appellate defenders. Distrust in appellate defenders fosters distrust in the entire system. We cannot afford that distrust.

I support the proposed standards.

Sincerely,

Jennifer Winkler

she/her
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