From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Comment on Proposed Standards for Indigent Defense CrR 3.1/CrRLJ 3.1/JuCR 9.2
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From: Benward, Kate <kbenward@kingcounty.gov>
Sent: Wednesday, April 30, 2025 9:39 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Proposed Standards for Indigent Defense CrR 3.1/CrRLJ 3.1/JuCR 9.2

April 30, 2025

Re. Proposed Standards for Indigent Defense CrR 3.1/CrRLJ 3.1/JuCR 9.2

Dear Justices of the Washington State Supreme Court,

I write to urge this Court to adopt the proposed interim caseload standard for appellate defense. This caseload reduction is long overdue. Without it, we will see an erosion in the quality of appellate defense, increased burnout and the exodus of experienced appellate defenders, and a deepening of systemic inequality in the criminal legal system.

Appellate public defenders are held to impossible standards: expected to handle a crushing caseload, underpaid compared to their counterparts, and under threat of personal sanction by the courts for requesting the time necessary to provide quality representation. I have been a public defender for 15 years, including nearly eight years as an appellate public defender in Washington. I loved this work, but recently left in large part because the caseload was unsustainable. No matter how experienced or dedicated, an appellate attorney cannot meet the current caseload without working nights, weekends, and while on vacation. The unrelenting caseload takes a personal toll on appellate defenders, our families, and clients whose constitutional rights we are ethically bound to uphold.

Under the current caseload standard, appellate attorneys require numerous extensions of time to file briefs because they simply have too many cases and refuse to sacrifice quality representation of their clients. In these motions to extend, attorneys are compelled to explain to the court the work they have completed and detail why they need an extension in the case. The underlying reason is ultimately always the same: attorneys have too many cases. And yet, the Court of Appeals often responds with threats and scorn, treating these requests as personal failings rather than structural inevitabilities. Attorneys are threatened with monetary sanctions, and in some cases ordered to personally pay a fine for insisting on the time that is required to vindicate their client's constitutional right to appeal.

Implicit in these attacks and personal fines on attorneys is the demand that appellate public defenders

sacrifice quality for quantity, at our client's expense. More recently, Division II of the Court of Appeals explicitly said as much—telling appellate attorneys that they spend too much time on so-called discretionary filings like reply briefs and petitions for review—critical filings in appellate litigation. What this really says is that poor clients don't deserve quality legal representation on appeal. This is a morally and constitutionally indefensible position.

The same implicit belief that poor defendants don't deserve the quality of legal representation appellate defenders insist on providing also underlies the opposition to reduced public defense caseload standards. No one who understands or cares about the work it takes to be an effective appellate public defender seriously disputes the caseload is currently too high; opponents simply do not want to invest the necessary resources to ensure poor people receive constitutionally adequate legal representation.

I am certain the courts who demand appellate defenders do less for their clients and opponents to reduced public defender caseloads would not accept this lower quality of representation for themselves or their loved ones. They would demand the quality, time, and attention that appellate public defenders fight to give their clients. But our criminal legal system only functions when the poor receive the same quality representation as the wealthy. Anything less betrays the principles of equal justice, entrenches inequality, and legitimizes a two-tiered system of justice.

For most appellate attorneys, it is by sheer force of will and personal sacrifice that they manage to produce high level work that advances their clients' constitutional rights and justice in the legal system. But the personal sacrifice it requires is unsustainable, and many experienced appellate attorneys are leaving the field. This is a loss for the criminal legal system because appellate law is complex and is done best with mentorship from experienced colleagues.

While the Court of Appeals has provided data showing that appellate filings are down since 2019, filing rates tell us nothing about the quality of the work, the complexity of the cases, or the toll these high filing rates took on attorneys. Notably, during COVID-19, time keeping records showed attorneys logged the same number of hours, but on fewer cases. This is not a sign of decreased work by appellate defenders, but of long-overdue attention to the depth and demands of individual representation.

This Court has previously demonstrated a willingness to confront the underlying structures that produce inequality in our legal system. Public defender caseloads are a critical part of this structural inequality. If we are serious about constitutional rights and making our criminal legal system more just, then this Court should adopt the interim appellate caseload standards.

Sincerely,

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