WASHINGTON APPELLATE PROJECT
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April 30, 2025

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

Re: Proposed Standards for Indigent Defense (Appellate)

Dear Justices of the Washington Supreme Court:

I support the amendments to the appellate caseload standards proposed by the WSBA in CrR 3.1, CrRLJ 3.1, and JuCR 9.2. The amendments are necessary to stem the exodus of appellate public defenders and ensure competent representation on appeal.

I have served as an appellate public defender with the Washington Appellate Project since 2006. High caseloads and low pay have always been an issue, but in recent years, the problem has come to a head. Over the past two-and-a-half years, we have experienced an unprecedented level of turnover. We lost six attorneys from an office that had only sixteen, and only one of the six left because she had reached retirement age. Others left because of burnout due to the caseloads. Although the lawyers we hired to replace them are brilliant and energetic, they cannot handle the same volume of serious cases. The backlog will increase, the cycle will repeat, and the problem will persist.

Other commenters have noted that at least in one Division of the Court of Appeals, the average length of the Verbatim Reports of Proceedings (VRPs) has not increased. This may be so, and it is true that case credits are calculated based solely on VRP length. (The number of credits per case = total VRP pages / 800 (rounded down) + 1). But as another commenter explained, VRP length does not tell the whole story because clerk's papers and exhibits may be dense and lengthy. But even *that* does not tell the whole story. Unlike the courts and prosecutors, appellate defenders must review *everything* filed in the trial court to determine what issues may be raised. The courts and prosecutors see only what the appellate defender ultimately "designates" for the record based on viable issues presented, but "the record" for the appellate defender is much, much larger. These documents that the appellate defender must review, at least half of which the judges, clerks, and prosecutors never have to see or worry about, are sometimes very technical (e.g. complicated scientific articles in support of a motion to suppress), difficult to decipher (e.g. lengthy handwritten pro se filings), or otherwise time-consuming to review (e.g. hours of video exhibits). Because courts and prosecutors never have to review these portions of the record if the appellate defender does not designate them, they may not understand the breadth of the appellate

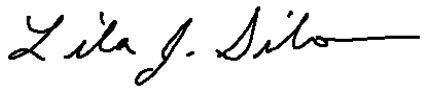
defender's task at this stage of the case. This Court should take into account the full scope of the appellate defender's record-reviewing role when determining caseload standards.[1]

It is also worth noting that civil appellate attorneys do not handle the volume of cases appellate defenders are expected to manage. An anecdote from the spring of 2011 demonstrates the point. I served on a panel of appellate attorneys speaking to law students about our careers and areas of practice. A student asked about the frequency of oral argument, so I mentioned that in the previous five months, I had presented 20 appellate oral arguments, five of which were in this Court. At the same time, I was filing three opening briefs per month. The civil appellate practitioners on the panel were stunned. Keep in mind, I had been practicing law for less than five years at this point, and some of the civil attorneys had practiced for more than 20 years. Yet the volume of work that was stunning to them was normal to me. I now know it should not be.[2]

The burdensome caseloads adversely affect not only the lawyers, but also their clients. As this Court knows, our glorious constitution guarantees the right to appeal and the right to court-appointed counsel for indigent appellants. Const. art. I, § 22. This constitutional guarantee becomes an empty promise when appellate defenders are overburdened. Everything is a tradeoff, so where the quantity is too high, either quality or timeliness is compromised. This Court should protect the constitutional rights to appeal and to the effective assistance of counsel on appeal by adopting the proposed appellate caseload standards.

Thank you very much for your consideration.

Sincerely,



Lila J. Silverstein
Washington Appellate Project

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[1] Note this is true even for the VRPs. For example, appellate defenders must review the record of voir dire to determine if there are issues involving GR 37, challenges for cause, prosecutorial misconduct, or violations of the right to be present or to a public trial. But if the appellate defender determines no viable issues are presented during jury selection, then the prosecutors and courts can forego reading several hundred pages of the VRPs. In short, there are many reasons why "the record" for the appellate public defender is much, much larger than for the other participants on a case.

[2] A year and a half later I was appointed on *Gregory*, which we litigated for six years. Subsequent local and national training and policy work related to *Gregory* and GR 37 has kept me away from a traditional caseload, and my role within my own office has shifted to mentorship and supervision. It is in that role that I see the urgent need for caseload reform.

From: OFFICE RECEPTIONIST, CLERK
To: Farino, Amber
Cc: Ward, David
Subject: FW: Comment on Proposed Appellate Standards
Date: Wednesday, April 30, 2025 11:49:26 AM
Attachments: OutlookEmoji-17220328805829ed22bff-485e-4884-8e23-237b11dbd131.png
Comment Appellate Caseload Standards Silverstein.pdf

From: Lila Silverstein <Lila@washapp.org>
Sent: Wednesday, April 30, 2025 11:46 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Proposed Appellate Standards

Dear Court,

Please find attached my comment in support of the proposed amendments to appellate caseload standards.

Thank you,

Lila Silverstein

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