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Subject: FW: Comment for CrR 3.1/CrRLJ 3.1/JuCR 9.2 - Standards for Indigent Defense (appellate caseloads)
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From: Matthew Catallo <Matthew@washapp.org>
Sent: Tuesday, April 29, 2025 11:57 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment for CrR 3.1/CrRLJ 3.1/JuCR 9.2 - Standards for Indigent Defense (appellate caseloads)

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Dear Justices of the Washington Supreme Court:

The Court should adopt the proposed interim appellate caseload standards. The current maximum—36 credits a year—is artificial, does not account for the day-to-day realities of appellate defense, and creates a perverse incentive to triage cases.

I have been a staff attorney at the Washington Appellate Project for only a year and a half. Before that, I was a deputy public defender with the Office of the Colorado State Public Defender (“OSPD”). I worked in Denver as a trial and appellate public defender. In 2022, OSPD was experiencing an extremely high attrition rate. The attorneys, including myself, were extremely overworked, under-compensated, and, generally, burnt out. The legislature addressed the systemic public defense crisis by passing a significant funding increase for public defense. Office of the State Public Defender, *Fiscal Year 2024–25 Budget Request* (Nov. 1, 2023) (<https://shorturl.at/2zFP0>); Shelly Bradbury, *Colorado public defenders—beset by high turnover, heavy workloads—seek \$17.7 million to raise salaries*, The Denver Post (Feb. 6, 2023) (<https://shorturl.at/CV5wt>).

The budget increase went into effect in the summer of 2023. “The increase in funding awarded for salaries had a positive impact on our agency, helping to retain experienced public defenders, and providing them a transparent, predictable, and market-based compensation plan.” *Fiscal Year 2024–25*, at 3. In other words, the attrition rate dropped, and the workload—while still high—became less turbulent and unpredictable.

I left OSPD in September of 2023, right as the system was improving, but before I realized that improvement. Instead, unbeknownst to me, I effectively went out of the frying pan, into the fire.

I always wanted to return to Washington to be an appellate public defender. I checked the Washington Appellate Project website daily for a year to wait for the next vacancy. I was fortunate enough to get an offer to work here, and I love it. But I did not realize the onerous

working conditions in this state.

Washington has a generally progressive reputation across the country. *See, e.g.*, Melinda Young-Flynn & Emily Vyhnanek, *State election results reflect Washington's progressive values*, Washington State Budget & Policy Center (Nov. 7, 2024) (<https://shorturl.at/zrp73>); Daniel Beekman & Jim Bruner, *WA bucks national trend and swings further to the left*, The Seattle Times (Nov. 7, 2024) (<https://shorturl.at/rVRZh>). I assumed that, given Washington's progressive status, there was no way Washington would have such acute caseload issues.

National standards recommend public defenders handle no more than 25 appeals per year. Nicholas M. Pace et al., RAND Corp., *National Public Defense Workload Study* (July 27, 2023) (<https://shorturl.at/xO6ug>). States like Utah, Wyoming, Hawai'i, and Ohio comply with that standard. Executive Offices and Criminal Justice Appropriations Subcommittee, *Utah Indigent Defense*, Utah State Legislature - 2020 General Session (Feb. 11, 2020) (<https://tinyurl.com/mu7u8e4p>); David Dudley, *The 'ticking time bomb' facing Wyoming's public defenders and their clients*, WyoFile (Jan. 7, 2025) (<https://tinyurl.com/2kmpwszz>); State of Hawai'i Office of the Public Defender, *Testimony of the Officer of the Public Defender, State of Hawai'i to the Committee on the Judiciary 2* (Jan 30, 2024) (<https://tinyurl.com/bddh4a7v>); Ohio Administrative Code Rule 120-1-07. Yet I've come to learn through first-person experience that, surprisingly, Washington lags behind.

The day-to-day reality of the work is hard to quantify into a data point. In one week near the end of 2024, I picked up three separate first-degree murder appeals. The three cases contained a total of 10,224 transcript pages. That is only 12 credits. But the appeals also contained 1,310 pages of clerk's papers, thousands of pages of paper exhibits, and hours of video exhibits. These additional parts of the record do not, for some reason, contribute to the case credits.

Working on these three cases simultaneously has been an immense task. I commonly work 80-hour weeks to ensure I maintain a semblance of timeliness with deadlines. But even then, I frequently have to effectively beg the Court of Appeals for extensions. And, of course, I've received more cases since I picked up the trilogy of homicide appeals, and my work on my other cases has not ceased. This is physically and emotionally taxing work.

I am concerned about a lack of parity between the defense and the State. The lack of pay parity has been widely commented on for years. *See, e.g.*, *Dolan v. King County*, 172 Wn.2d 299, 304–09, 258 P.3d 20 (2011); Ronald F. Wright, *Parity of Resources for Defense Counsel and the Reach of Public Choice Theory*, 90 Iowa L. Rev. 219, 222 (2004); Lawrence Herman, *Gideon and the Golden Thread*, 99 Iowa L. Rev. 2015, 2027 (2014); Adam M. Gershowitz, *Raise the Proof: A Default Rule for Indigent Defense*, 40 Conn. L. Rev. 85, 117–19 (2007). Although based on anecdote, I am also concerned about workload parity.

For example, by the end of 2024, I had my last oral argument of the year in the Court of Appeals. I spoke casually with the prosecuting attorney before argument, and they told me they were covering for the writing prosecutor. They explained the writing attorney “already had five oral arguments” that year, so they got coverage. The argument was my eleventh in 2024, however.

This is not a tenable framework for appellate public defense. My experience is not an outlier, it is the norm. The proposed interim standards will soften the problem. It is an imperfect solution, but that is why it's temporary. We need immediate support while the work-study comes to fruition. Without it, the attrition will continue, the work will become

harder, and, most importantly, our clients will continue to suffer.

I love my job, and I want to do it until I retire. But we need institutional support to ensure the system does not break into systemic collapse. The Court should adopt the proposed appellate caseload standards.

Sincerely,

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