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April 30, 2025

Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Via email: supreme@courts.wa.gov

Re: CrR 3.1/CrRLJ 3.1/JuCR 9.2 Standards for Indigent Defense

Dear Honorable Justices:

Nielsen Koch & Grannis, PLLC requests that this Court adopt the interim appellate caseload standard of 25 cases per year, recommended by the Council on Public Defense and Washington State Bar Association.

For over 30 years, our law firm has provided indigent appellate defense services throughout Washington. We handle hundreds of new appeals every year. Collectively our attorneys have handled thousands of appeals, representing clients in every division of the Court of Appeals and the Washington Supreme Court. During this time, our office has experienced firsthand the changes to indigent appellate representation, including implementation of the current caseload standard in 2007, the types of cases qualifying for appointed counsel, and the scope of what constitutes effective representation for each individual client.

We are thus well-situated to offer insight into the shortcomings of the current caseload standard. Attached to this letter is data compiled internally by this office, which demonstrates the current standards for indigent defense fail to accurately reflect, or account for, the significant workload increases our attorneys have experienced over the last decade because of consistent upward trends in the size, type, and number of time-consuming cases assigned to our office during this period.

The current indigent standards assume an average transcript length of 350 pages. The Office of Public Defense (OPD) implements this average transcript length with a case weighting system that awards an additional case credit for each 800 pages of transcript, based on historical data demonstrating this maintains the average length of 350 pages of transcripts. In his comments to this Court, Chief Judge Robert Lawrence-Berrey suggests a better approach would be to give “partial case credits, for example $\frac{1}{4}$ credit for every 200 pages of record, which would be a more precise way to equalize work among attorneys.” Judge Lawrence-Berrey, Comments for CrR 3.1/CrRLJ 3.1/JuCR 9.2 – Standards for Indigent Defense (appellate caseloads) at 1. There are at least three problems with this proposition based on our experiences.

First, our data shows that over the last 10 fiscal years, the average transcript length of cases assigned to our office has been about 400 pages per credit. This is reflective of the consistent upward trend in the number of assigned cases exceeding 1,000 transcript pages during that same period. Thus, the presumption of an average transcript length of 350 pages is a faulty premise.

Second, given our data, the 800-page case weighting underestimates the average transcript length. Awarding quarter credits for transcripts of less than 800 pages would astronomically increase the appellate caseloads beyond the current standard of 36 cases per year based on the faulty average transcript length of 350 pages.

Third, the record size of the average case is not dispositive of the current crisis within the appellate public defense system. Judge Lawrence-Berrey’s comments to this Court represent that the “[a]verage criminal record sizes have remained fairly consistent since 2022, [while] [a]verage criminal record sizes have remained below OPD’s benchmark of 800 pages in 2023, 2024, and to date in 2025.” Judge Lawrence-Berrey, Comments for CrR 3.1/CrRLJ 3.1/JuCR 9.2 – Standards for Indigent Defense (appellate caseloads) at 2. Setting aside that only three years of data are offered in support of this representation, the current crisis is not just the result of onerous case record sizes, but also the types of cases our office handles, which further exacerbate the problems.

For example, the number of murder cases assigned to our office has consistently trended upward, from 17 in 2015/2016 to nearly double that in 2023/2024, even when accounting for an overall case assignment drop during the COVID-19 pandemic. Between 2020 and 2023 alone, the number of murder cases assigned to our office more than tripled. This increase exceeds even local homicide statistics showing that the murder rate in King County doubled between 2019 and 2023: <https://www.seattletimes.com/seattle-news/law-justice/nearly-70-killed-in-seattle-homicides-last-year/>.

The number of accelerated review parental rights cases assigned to our office during this same 10-year period has also consistently increased. Under the Rules of Appellate Procedure, these accelerated review cases dictate that attorneys prioritize them over other previously assigned cases, causing work on those other cases to stall while the attorney attends to the case on accelerated review. Further, the current 350-page transcript standard does not account for the voluminous exhibits that parental rights cases tend to carry, all of which require careful review by the attorney.

Since 2015, the number of personal restraint petitions (PRPs) assigned to our office has also increased substantially, more than doubling during that time. Between 2015-2020 our office was assigned about 6 PRPs per fiscal year. Since 2020, however, we have received at least 15 PRPs per year. In fiscal year 2023/2024, our office was assigned 20 PRPs. Because these cases often involve fact intensive matters outside the record, our attorneys are required to spend a disproportionate amount of time investigating, collecting, and analyzing information in support of PRPs when compared to direct appeal cases. It is precisely for this reason that “all PRP appointments count as at least two case credits irrespective of record size.” Judge Lawrence-Berrey, Comments for CrR 3.1/CrRLJ 3.1/JuCR 9.2 – Standards for Indigent Defense (appellate caseloads) at 1. To credit PRPs otherwise would vastly undervalue the unique quality and quantity of the work attorneys must spend on such cases.

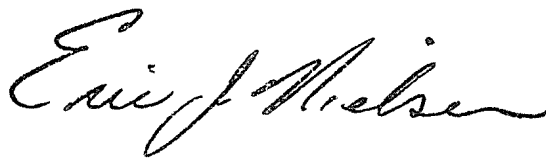
Our data demonstrates that over the past decade, assigned cases have consistently increased in volume, severity, and required effort. But the current caseload standards also fail to account for the vast “discretionary” pleadings appointed counsel must file because they are in the best interest of the client, advance the goals of representation, are necessary to preserve arguments for review, or exhaust claims for purposes of federal review. While such filings may not be required under the Rules of Appellate Procedure, the Rules of Professional Conduct dictate otherwise. See RPC 1.1 (competence); RPC 1.2 (scope of representation); RPC 1.2 (diligence); RPC 1.4 (communication); RPC 2.1 (advisor); RPC 3.2 (expediting litigation). So does the Washington State Bar Association (WSBA). See Wash. Bar Assoc., *Washington State Guidelines for Appointed Counsel in Indigent Appeals*. Most importantly, the state and federal constitutions demand it. U.S. Const. amend. 6, 14; Const. art. 1, §§ 3, 22.

Washington courts often refuse to address issues on appeal that are inadequately briefed or left unaddressed in reply. See, e.g., State v. Gouley, 19 Wn. App. 2d 185, 200 n.5, 494 P.3d 458 (2021) (refusing to review issues for which inadequate argument has been briefed or only passing treatment has been made), review denied, 198 Wn.2d 1041, 502 P.3d 85 (2022); Lipscomb v. Farmers Ins. Co. of Washington, 142 Wn. App. 20, 33, 174 P.3d 1182 (2007) (concluding issue was not properly before the Court because appellant failed to address in reply whether issue was waived on appeal). It is precisely for these reasons that careful advocacy and

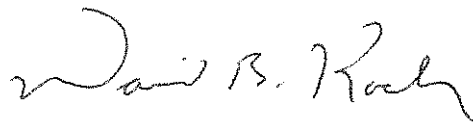
effective representation on appeal is necessary to ensure that rights are not forgone, and that substantial legal and factual arguments are not inadvertently waived.

The current caseload standards, however, impede these constitutional protections and the data trends highlighted here demonstrate the urgent need to update indigent defense standards to reflect the actual workload and case complexity all indigent appellate attorneys now face. Thus, we respectfully request that this Court adopt the proposed interim appellate caseload standard of 25 cases per year.

Respectfully submitted,
NIELSEN KOCH & GRANNIS, PLLC



ERIC NIELSEN
WSBA No. 12773

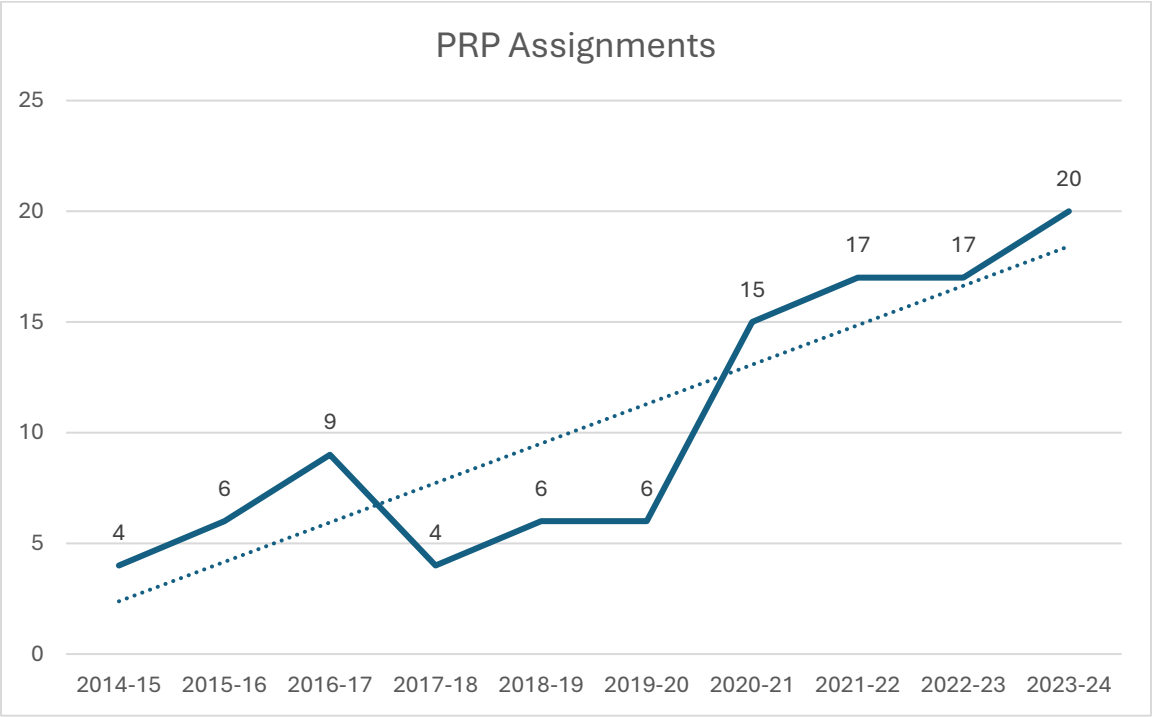


DAVID B. KOCH
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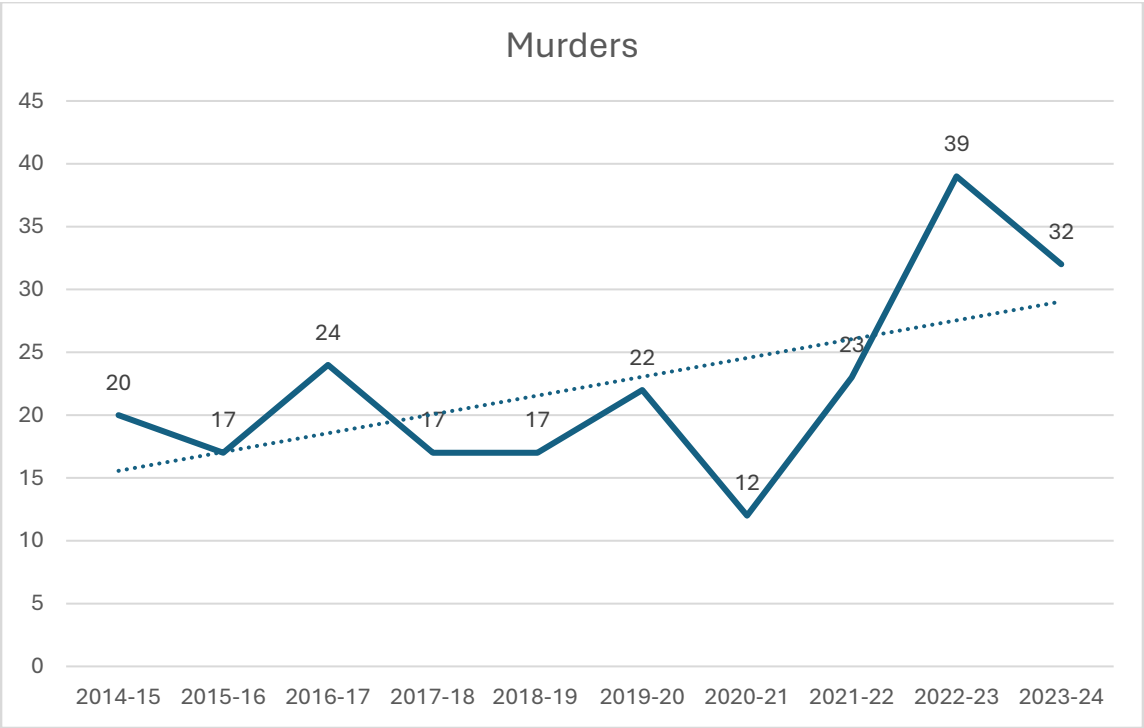


CASEY GRANNIS
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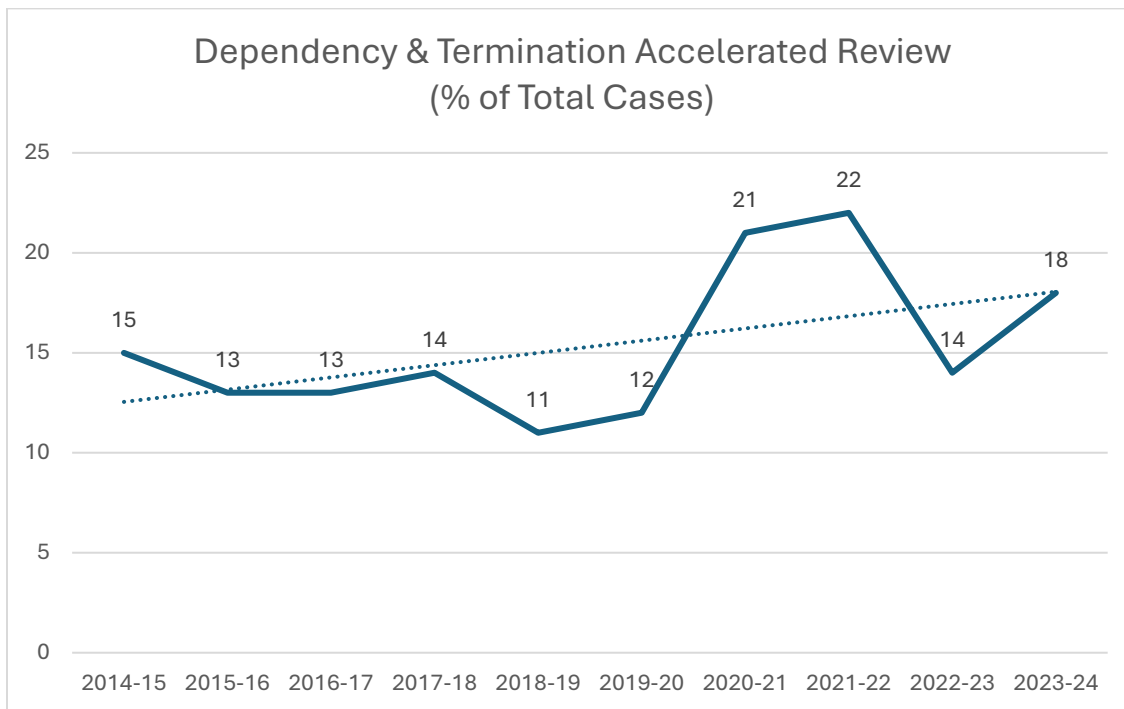
Fiscal Year	PRP Assignments
2023-24	20
2022-23	17
2021-22	17
2020-21	15
2019-20	6
2018-19	6
2017-18	4
2016-17	9
2015-16	6
2014-15	4



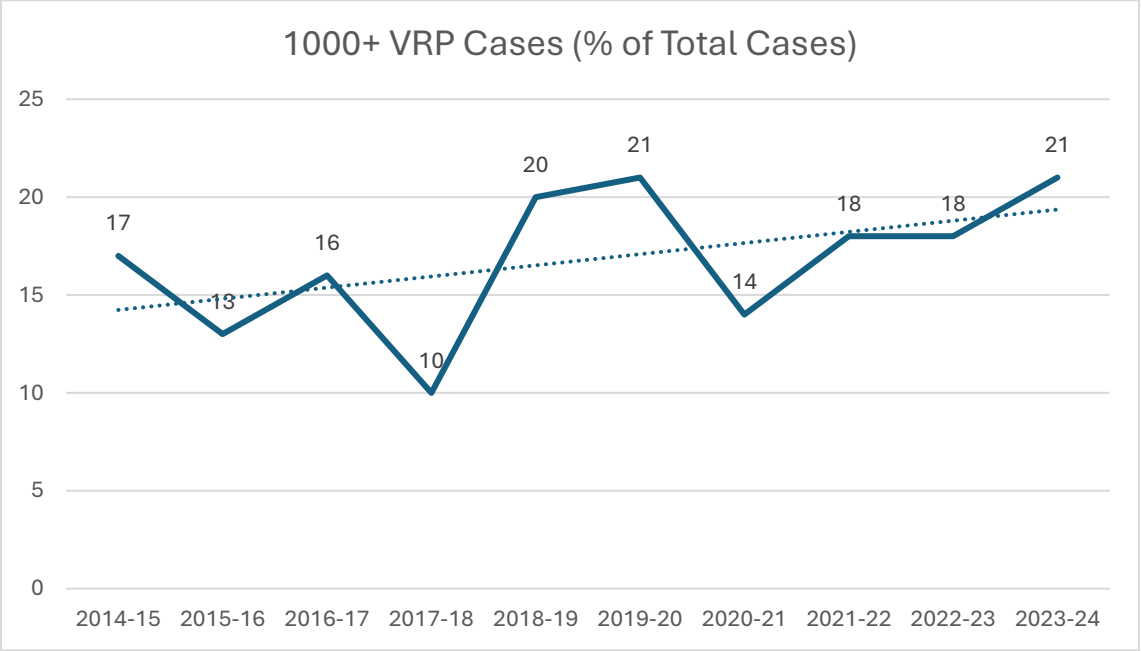
Fiscal Year	Murders
2023-24	32
2022-23	39
2021-22	23
2020-21	12
2019-20	22
2018-19	17
2017-18	17
2016-17	24
2015-16	17
2014-15	20



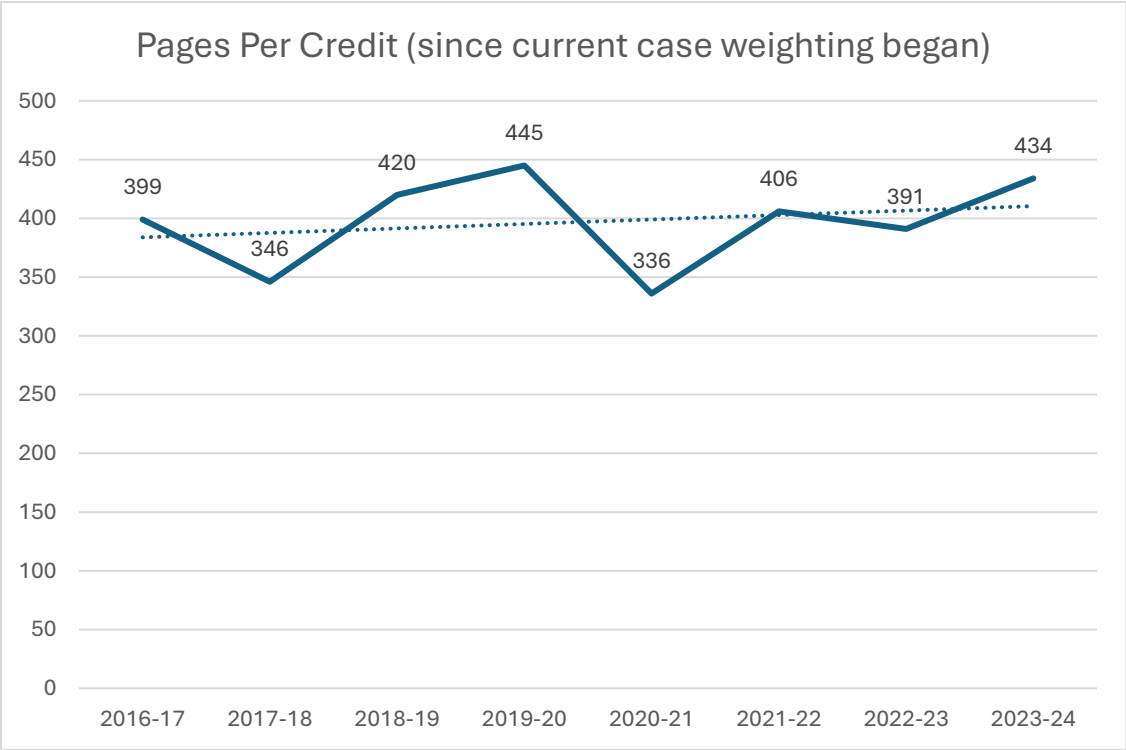
Fiscal Year	Dependency & Termination Accelerated Review (% of Total Cases)
2023-24	18
2022-23	14
2021-22	22
2020-21	21
2019-20	12
2018-19	11
2017-18	14
2016-17	13
2015-16	13
2014-15	15



Fiscal Year	1000+ VRP Cases (% of Total Cases)
2023-24	21
2022-23	18
2021-22	18
2020-21	14
2019-20	21
2018-19	20
2017-18	10
2016-17	16
2015-16	13
2014-15	17



Fiscal Year	Pages Per Credit (since current case weighting began)
2023-24	434
2022-23	391
2021-22	406
2020-21	336
2019-20	445
2018-19	420
2017-18	346
2016-17	399
Average	397.125



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Dear Supreme Court,

Nielsen Koch and Grannis submits the attached comment to the proposed rule change to

- CrR 3.1/CrRLJ 3.1/JuCR 9.2 - [Standards for Indigent Defense \(appellate caseloads\)](#)

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