



1511 Third Ave, Suite 610
Seattle, WA 98101
206-587-2711
www.washapp.org

April 30, 2025

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

Re: Proposed Amendment of RAP 3.1, CrRLJ 3.1, and JuCR 9.2 (appeals)

Dear Justices:

The Washington Appellate Project urges this Court to adopt the proposed amendments of CrR 3.1, CrRLJ 3.1, and JuCR 9.2, lowering the maximum number of cases for an appellate public defender from 36 to 25 cases. This proposal recognizes that public defense attorneys, as any attorney, must provide each client competent and diligent representation. RPC 1.1 and RPC 1.3. When a person appeals a felony conviction or loss of their family the attorney this State appoints that person must be able to represent them in a manner consistent with the ethical rules which bind all attorneys. The proposed amendment ensures attorneys' caseloads will permit them to give each client's case the attention it deserves. And, the constitutional promise of the effective assistance of appointed counsel for people who cannot afford an attorney can permit no less.

Washington was the first state to expressly guarantee the constitutional right to counsel on appeal. *State v. Rafay*, 167 Wn.2d 644, 651, 222 P.3d 86 (2009) (citing Const. art. I, § 22). The existing standard of 36 cases significantly strains the quality if not the reality of that guarantee.

It is a basic expectation of legal representation that an attorney competently and diligently represent each client. RPC 1.1; 1.3. In 2024 the WSBA Council on Public Defense conducted a survey of appellate public defenders. That survey revealed 94% of respondents must regularly triage the work they provide their clients because of the time-demands of their caseloads. More than 50% of respondents do not have adequate time to research legal and factual issues in their cases. And still, 87% of respondents said that in the vast majority of their cases they must ask courts for more time to file briefs. The existing standards do not provide appellate defenders the time they need to meet their

ethical obligations to clients. As a consequence, the existing standards lead to delays in the appellate courts.

Washington's existing standard of 36 appeals substantially exceeds published national standards. In 1973, the federal government's National Advisory Commission on Criminal Justice Standards and Goals enacted a caseload maximum of 25 for appellate public defenders. *National Advisory Commission on Criminal Justice Standards and Goals, The Defense*, (1973) (NAC). Notably, Washington's appellate standards used to comport with the 1973 NAC standards. But in 2007, Washington *increased* the maximum number of clients an appellate public defender could represent in a year from 25 to 36. That increase was not grounded in any research or study. While that increase was based on speculation that technology would allow appellate defenders to handle more cases that increase came with no explanation for why Washington's appellate public defenders could be expected to competently represent more clients than their counterparts across the country who had access to the same technological improvements. Practice has shown, they cannot.

The proposed interim standard of 25 cases returns Washington to compliance with the 52 year-old NAC standard and places Washington in closer alignment with prevailing national norms. However, the 25-case standard will still exceed prevailing national norms. For example, more than 40 years ago the National Legal Aid and Defender Association adopted an appellate caseload maximum of 20 total work units, and provides a detailed case-weighting system that counts a number of tasks in appellate representation against that total. Michigan recently enacted an interim standard of 21.6 cases after a workload study recommended a standard of 14.8 cases, again with a detailed case-weighting system, to ensure appellate defenders have the time need to provide ethical and effective representation. Reduction of the existing 36-case limit is a long-overdue step towards ensuring appellate defenders in Washington can provide ethical and constitutional representation to their clients.

Adopting new appellate public defense standards does not present the number or scope of issues this Court heard during its hearings on trial public defense standards last fall. First, trial public defense involves attorneys representing people in hundreds of superior, district, and municipals courts, each with different funding mechanisms. Appellate public defense, on the other hand, is funded entirely by the State through the

Office of Public Defense (OPD) for representation before this Court and the Court of Appeals. Second, the number of public defenders engaged in appellate public defense is dwarfed by the number of trial public defenders. Unlike the thousands of attorneys providing public defense in trial courts, at present there are only approximately 60 attorneys providing appellate public defense across Washington. The cost of adopting the proposed amendments of Standard 3.4 are, thus, relatively small. And because OPD alone oversees appellate public defense, implementation of any changes will be straightforward.

The proposed amendment is needed to ensure Washington can maintain a viable system of appellate public defense. In one six-month period, this office lost three experienced attorneys, 16% of its attorneys, and they left in large part to the demands of the workload. Attorneys want to do this work. Attorneys are leaving appellate public defense because the untenable caseload forces them to sacrifice the quality of their work or compromise their ethical obligations in an untenable fashion. As detailed above the proposed amendment is needed to ensure Washington can live up to its first-in-the-nation guarantee of the right to counsel on appeal.

These proposed amendments are the next and necessary step to this Court's commitment to the promise of appellate public defense. The Washington Appellate Project urges the Court to amend CrR 3.1, CrRLJ 3.1, and JuCR 9.2 to reduce the maximum number of cases for an appellate public defender in a year from 36 to 25.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gregory C. Link". The signature is fluid and cursive, with the first name "Gregory" being more prominent.

Gregory C. Link, Director
Attorney At Law

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Farino, Amber](#)
Cc: [Ward, David](#)
Subject: FW: Washington Appellate Project Comments
Date: Wednesday, April 30, 2025 8:55:54 AM
Attachments: [image003.png](#)
[Wash. App. Proj. Comment CrR 3.1, CrRLJ 3.1, JuCR 9.2 \(appeals\).pdf](#)
[Wash. App. Proj. Comment GR 14.pdf](#)
[Wash. App. Proj. Comment RAP 10.2.pdf](#)
[Wash. App. Proj. Comment RAP 18.17.pdf](#)

From: Greg Link <greg@washapp.org>
Sent: Wednesday, April 30, 2025 8:54 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Washington Appellate Project Comments

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Please find attached the Washington Appellate Project's comments on the following proposed rule changes:

CrR 3.1/CrRLJ 3.1/JuCR 9.2 Standards for Indigent Defense(appellate)
GR 14
RAP 10.2
RAP 18.17



Gregory C. Link, Director
1511 Third Avenue, Suite 610
Seattle, WA 98101
206-587-2711
greg@washapp.org