

WSR 25-02-012
RULES OF COURT
STATE SUPREME COURT
[November 7, 2024]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO CrR) NO. 25700-A-1611
3.1/CrRLJ 3.1/JuCR 9.2 STANDARDS)
FOR INDIGENT DEFENSE RE:)
APPELLATE CASELOADS)

The Washington State Bar Association (WSBA) and the WSBA Council on Public Defense, having recommended the suggested amendments to the Standards for Indigent Defense under CrR 3.1/CrRLJ 3.1/JuCR 9.2 regarding appellate caseloads, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(b) The purpose statement as required by GR 9(e) is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov.

Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of November, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments
STANDARDS FOR INDIGENT DEFENSE
Rules CrR 3.1/CrRLJ 3.1/JuCR 9.2 Stds

Submitted by the Washington State Bar Association

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C. Purpose:

These suggested amendments to the Standards for Indigent Defense implement an interim caseload standard for public defense appeals pending the outcome of a workload study that will result in a final appellate caseload standard.

In October 2023, the Washington Supreme Court requested that the Washington State Bar Association's Council on Public Defense review and update caseload standards in the Court's Standards for Indigent Defense. In March 2024, the CPD recommended, and the WSBA Board of Governors approved, comprehensive amendments to the Standards for Indigent Defense, including revised caseload standards. At that time, CPD and the WSBA Board reserved the matter of standards pertaining to caseloads for appeals in public defense cases due to the differences in trial and appellate public defense practice and because the resources available to develop trial-level standards did not address appeals. The WSBA Board and CPD concluded the appellate standards should be reviewed by individuals with expertise in that practice area.

The CPD convened a committee of judges, law professors, private attorneys, and appellate public defense practitioners to update caseload standards for attorneys handling appeals in public defense cases. This committee determined that additional research is necessary before a final caseload standard could be recommended. The committee has begun the process of soliciting proposals from outside researchers for an appellate workload study.

It is likely the workload study will take one year or more to complete. Concerningly, however, a survey of Washington appellate public defense practitioners conducted by the CPD appellate committee indicates the current caseload standard does not permit attorneys to devote the necessary time to their cases. For example, 94% of survey respondents stated they needed to triage or limit case activities because of insufficient time, and 87% stated they needed to request filing extensions for opening briefs in three-quarters or more of their cases. In addition, the survey responses indicated appellate public defense attorneys are overwhelmingly overworked - 72% stated they frequently work on the weekends and 82% stated they feel exhausted and drained at the end of the workday.

These survey responses and committee members' experience indicate an immediate need for caseload updates to ensure appellate public defenders can provide adequate representation to their clients. A workload study resulting in a final appellate caseload standard, however, will take time. WSBA, therefore, proposes an interim standard modifying the appellate caseload standard from a maximum of 36 appeals per attorney per year to 25 appeals per attorney per year while the workload study is underway. This caseload is based on the standard in place prior to 2007. In 2007, the caseload maximum was increased from 25 appeals to 36 appeals, assuming an average transcript length of 350 pages. The increase was based on predictions that improvements in technology would make appellate work faster. Responses to the survey of appellate practitioners suggest increased use of technology in public defense cases has likely had the opposite effect, increasing the

time necessary to provide adequate appellate defense. For that reason, the committee proposes a return to the 25-appeal standard until a final standard can be developed based on the results of the workload study. The WSBA Board of Governors adopted this recommended interim caseload standard as part of the WSBA Standards for Indigent Defense Services and approved the suggested amendments to the Court standards on September 7, 2024.

D. Hearing: A hearing is not requested. The Court, however, has scheduled a public hearing for September 25, 2024, to consider the previously proposed amendments to the Standards for Indigent Defense. Proponents do not oppose consolidating the suggested amendments relating to appellate caseloads with the hearing on the comprehensive amendments to the Standards.

E. Expedited Consideration: Expedited consideration is requested due to the interim nature of the suggested amendments.

F. Supporting Material:

1. Cover memo to the WSBA Board of Governors dated August 13, 2024

**SUGGESTED AMENDMENTS TO THE STANDARDS FOR INDIGENT DEFENSE
(CrR 3.1 Stds, JuCR 9.2 Stds, CrRLJ 3.1 Stds)**

STANDARDS FOR INDIGENT DEFENSE

CrR 3.1 Stds, JuCR 9.2 Stds, CrRLJ 3.1 Stds

Standard 3. Caseload Limits and Types of Cases

Standard 3.1 - 3.3 [Unchanged.]

Standard 3.4. Caseload limits. The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 felonies per attorney per year; or

300 misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this standard, 400 cases per year; or

250 juvenile offender cases per attorney per year; or

80 open juvenile dependency cases per attorney; or

250 civil commitment cases per attorney per year; or

1 active death penalty trial court case at a time plus a limited number of non-death-penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of standard 3.2; or

~~36~~ 25 appeals to an appellate court hearing a case on the record and briefs per attorney per year. (The ~~36~~ 25 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)

[remainder unchanged]

Standard 3.5 - 3.6 [Unchanged.]