

**Council on Public Defense Statement on Workloads**

(Adopted by the WSBA Board of Governors 1/13/2022)

As the pandemic continues, public defense counsel across Washington increasingly have **workloads** that threaten their ability to provide effective representation, even if the number of cases they are assigned comports with the annual case assignment limits set by the Washington Supreme Court.

Washington’s applicable court rule makes clear that lawyers should not “accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.” CrR 3.1 Stds.<sup>1</sup> When defenders’ workloads exceed their ability to provide effective representation, the attorneys should not be given, and should not accept, new clients until their workload has been reduced to a level that permits providing quality representation.

The pandemic has forced many courts to stop or severely limit trials. Public defense attorneys, now required to work remotely, have struggled to communicate with clients, many of whom do not have technology for secure online communication. Obtaining discovery has become time consuming. Pretrial offers from prosecutors to resolve cases without a trial have been far fewer as a result.

During the pandemic period, prosecutors have tended to prioritize the most serious charges when filing new cases, thereby increasing the complexity of public defense attorney workloads. Some prosecutors are filing lower-level felonies as misdemeanors, increasing the seriousness of attorneys’ misdemeanor cases.

During that same period the rate at which cases get resolved has significantly decreased. Statewide, total criminal-case resolutions decreased by 33% in the Covid-19 period (March-

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<sup>1</sup> This is consistent with the [American Bar Association Standing Committee on Ethics and Professional Responsibility Formal Opinion 06-441, which states](#), “If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients.” The Formal Opinion also addresses the responsibility of those who supervise individual attorneys by stating that “lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.” The Opinion concludes, “If a supervisor knows that a subordinate’s workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, **the supervisor is responsible for the subordinate’s violation of the Rules of Professional Conduct.**” (Emphasis added.)



December, 2020) compared to same period during the previous year.<sup>2</sup> The adverse impact of delayed resolutions has resulted in increases in the seriousness of attorneys' caseloads. This impact is exacerbated by counties' current difficulty, and in some cases inability, to hire and retain experienced public defense attorneys.

As a result, **open caseloads – in both number and complexity - now make demands that even experienced defenders sometimes cannot meet.** When workload exceeds an attorney's capacity, then public defense attorneys and offices can request funding to hire additional attorneys, decline appointment to new cases, and work with others in the legal system to divert and/or reduce the number of cases in the system.

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<sup>2</sup> COVID-19 and Adult Criminal Justice: A Quantitative Look at Affected Systems, Washington State Institute for Public Policy, July, 2021, pp. 9-10, [https://www.wsipp.wa.gov/ReportFile/1739/Wsipp\\_COVID-19-and-Adult-Criminal-Justice-A-Quantitative-Look-at-Affected-Systems\\_Report.pdf](https://www.wsipp.wa.gov/ReportFile/1739/Wsipp_COVID-19-and-Adult-Criminal-Justice-A-Quantitative-Look-at-Affected-Systems_Report.pdf)