

**Statement: Public Defense Lawyers Should Seek Relief from Excessive Workloads**

(Adopted by the WSBA Board of Governors 7/21/2022)

*Unmanageable public defense attorney workloads threaten their clients' right to representation.* Public defense lawyers in Washington face a workload crisis, threatening their clients' right to effective representation and the well-being of the lawyers and their staffs. In March 2022 the Washington Defender Association asked public defenders across the state about their workloads and needed resources. More than 250 public defenders from 35 counties and numerous cities across the state responded. Primary reasons for the workload crisis include:

- Inability to recruit and retain sufficient numbers of public defense lawyers to handle the total workload;<sup>1</sup>
- Inadequate resources, such as support staff, investigators and social workers; and
- Inability to resolve cases, particularly the complex cases, in a timely manner in order to offset new case assignments, in part due to the pandemic.<sup>2</sup>

Other states have similar challenges. A 2022 American Bar Association (ABA) workload study found that Oregon has only 31% of the public defense attorneys needed to handle its adult and juvenile caseloads.<sup>3</sup> A similar study in New Mexico found that the state public defender has only 33% of the attorneys needed to provide reasonably effective assistance of counsel to its clients.<sup>4</sup> A preliminary, similar assessment applied to Washington's current caseload standards supports the conclusion that Washington only has about one-third of the public defense lawyers needed.

*Washington public defense lawyers have few tools to address unmanageable workloads.*

Earlier this year, recognizing that a growing backlog of cases threatened the right to counsel the Washington State Bar Association (WSBA) Board of Governors issued a *Statement on Workloads* noting:

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.<sup>5</sup>

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<sup>1</sup> "[Lawyers coping with attorney shortage in Yakima County](#)", Yakima Herald Republic, May 6, 2022.

<sup>2</sup> Washington Office of Public Defense, [Defending](#) Clients in the COVID Environment: Survey Results from Private and Public Defense Counsel (2021).

<sup>3</sup> American Bar Association, [The Oregon Project](#) (2022).

<sup>4</sup> American Bar Association, [The New Mexico Project](#) (2022). The ABA, the National Center for State Courts, and the Rand Corporation are developing both a meta study of all the public defense workload reports in the past eight years and a recommended set of national caseload standards for public defense lawyers. Those standards should be published this summer.

<sup>5</sup> Council on Public Defense [Statement on Workloads](#) (Adopted by the WSBA Board of Governors 1/13/2022).



ABA Opinion 06-441 makes clear what a lawyer with too many cases must do:

If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments.<sup>6</sup>

Washington defenders and assigned counsel can and should seek relief from excessive workloads, declining to accept new appointments, working with others to develop and increase diversion programs, and seeking new or improved resources.

Court-ordered relief is a final option. (A successful example of such court-ordered relief can be found at Order on Motion to Withdraw, *Arizona v. Lopez et. al*, Superior Court for the County of Mohave, December 17, 2007).

Public defense lawyers seeking relief will find support in WSBA Board of Governor's statements addressing workload<sup>7</sup>. See Advisory Ethics Opinion 1713 (1997):

If the problem with complying the RPC 1.2, 1.3, and 1.4 is the volume of cases the attorney accepts, then such cases should be declined. ...If the attorney cannot comply with RPC 1.2, then the attorney should not take the case. See ABA Committee on Ethics and Professional Responsibility and Formal Opinion 347 (1981).

See also, the ABA *Eight Guidelines of Public Defense Related to Excessive Workloads*,<sup>8</sup> and Washington Supreme Court rules implementing *Standards for Indigent Defense*. The Court's *Standards* specifically provide: "Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation."<sup>9</sup> Standard 3.3 provides that when a public defender's workload becomes more difficult or time-consuming, per-attorney caseloads should be reduced.<sup>10</sup>

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<sup>6</sup> American Bar Association, Formal Opinion 06-441 [Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation](#), May 13, 2006. See also, Oregon State Bar Association, Formal Opinion No 2007-178 [Competence and Diligence: Excessive Workloads of Indigent Defense Providers](#) and [American Council of Chief Defenders Statement on Caseloads and Workloads](#) (2007), including, at p. 2: "Excessive public defender caseloads and workloads threaten the ability of even the most dedicated lawyers to provide effective representation to their clients." Introduction.

<sup>7</sup> See, in addition to *Statement on Workloads*, supra fn. 5, Two Council on Public Defense Advisory Notices Approved by the WSBA Board of Governors September 18, 2020 and May 21, 2021, respectively: [Implementation of the Standards for Indigent Defense During the Coronavirus Emergency](#) and [Response to the Emergency Caused by Pandemic Driven Increased Public Defender Caseloads](#). The *Response* document includes an Appendix with options for attorneys with excessive workloads.

<sup>8</sup> [ABA Eight Guidelines of Public Defense Related to Excessive Workloads](#) (2009).

<sup>9</sup> [CrR 3.1 Stds. Standard 3.2](#).

<sup>10</sup> The Washington Supreme Court has emphasized the importance of complying with workload standards. [State v. Graham](#), 194 Wn.2d 965, 968, 970 (2019).

The American Bar Association president has made it clear that:

... ABA policy and well-established legal principles support public defenders in assertively seeking relief from excessive workloads. Courts, in turn, should provide relief when excessive caseloads threaten to lead to representation lacking in quality or to the breach of professional obligations. *To do otherwise, not only harms individual defendants but our entire justice system.*<sup>11</sup> *Emphasis added.*

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<sup>11</sup> [ABA SCLAIID finds resource deficiencies in its workload study of New Mexico public defense system](#), January 14, 2022.