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BarNews

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Washington State Bar News relies on submissions from WSBA members and members of the public that are of interest to readers. Articles should not have been submitted to any other publications and become the property of the WSBA. Articles typically run 1,000-2,500 words. Citations should be incorporated into the body of the article and be minimal. Please include a brief author's biography, with contact info, at the end of the article. High-resolution graphics and photographs (preferably 1 MB in size) are requested. Authors should provide a high-resolution digital photo of themselves with their submission. Send articles to wabarnews@wsba.org. The editor reserves the right to edit articles as deemed appropriate. The editorial team may work with the writer, and the editor may provide additional proofs to the author for review.

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We welcome letters to the editor on issues presented in the magazine. Email letters to wabarnews@wsba.org.

Letters to the editor published in *Bar News* must respond to content presented in the magazine and also comply with Washington General Rule 12.2 and *Keller v. State Bar of California*, 496 U.S. 1 (1990).^{*} *Bar News* may limit the number of letters published based on available space in a particular issue and, if many letters are received in response to a specific piece in the magazine, may select letters that provide differing viewpoints to publish. *Bar News* does not publish anonymous letters or more than one letter from the same contributor per issue. All letters are subject to editing for length, clarity, civility, and grammatical accuracy.

^{*}GR 12.2(c) states that the WSBA is not authorized to "(1) Take positions on issues concerning the politics or social positions of foreign nations; (2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or (3) Support or oppose, in an election, candidates for public office." In *Keller v. State Bar of California*, the Court ruled that a bar association may not use mandatory member fees to support political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services.

Chainsaw Instead of Scalpel Not a Cure

The WSBA has made a serious mistake.

I am the director of public defense for Mason County. Before anyone accuses me of "meet and plead" tactics used by some overworked public defenders, Mason County has one of the highest per-capita jury trial rates in the state—roughly 10 times that of King County. We work our cases, and we work them hard.

We also keep our attorneys at or near the maximum caseload limits allowed prior to the March 8 Board of Governor's meeting.

There is a shortage of attorneys. And there are attorneys leaving public defense entirely. The caseload

is certainly a part of that—but not all. The fact is, public defense is a job where the court, prosecutor, Board of County Commissioners, the public in general, and possibly one's own client are going to be grumpy about. It's also one of the lowest-paid ways to practice law.

The original caseloads were certainly high. They were at the high end of what is doable for a good attorney. Now my staff and I pride ourselves on being good attorneys—and we handled it. Could they have used some reduction? Possibly. But was that the primary factor in the staffing crisis? Or did low pay and the stigma associated with public defense also play a major role?

Because the WSBA has used a chainsaw where a scalpel would have served. It has opted to fix the shortage

of public defenders by drastically lowering caseloads. For reference, had the 2027 standards been in place in 2023, here in Mason County we would have entirely run out of available public defense attorneys in mid- to early-April. Roughly 70 percent of 2023 felonies and 75 percent of 2023 misdemeanors would not have had available counsel.

In short, the WSBA has observed a problem with *supply* and has chosen to fix it by quadrupling *demand*. While I understand that many of us became lawyers because math was not our strong suit, it should be apparent that this is not how markets work.

In order to continue defending cases, Mason County now needs to increase its public defense staff. But we can't. There are still no attorneys to be hired. So even if we were able to get Mason County to devote the required *additional 5 percent of its entire budget* to public defense, we wouldn't have the attorneys to hire. They do not exist, and no amount of money or leisure will cause their materialization.

And this is true statewide.

So, what will happen? Well, we're about to see one of three things happen. Either (1) prosecutors will be forced to limit which crimes will be charged in order to accommodate defense availability, (2) people will spend time in custody without the availability of counsel, or (3) courts will begin dismissing cases *en masse* on due process grounds.

Under (1) and (3), this state is ill-served. Either of those decriminalizes ... a lot. In a recent criminal work group meeting, I suggested binge-watching the *Purge* movies and taking notes.

Under (2), our clients are ill-served. Nobody should be held in custody for an extended period with no access to counsel. But it is happening.

Different counties will attempt to control the damage from this in different combinations of the above, but it is entirely damage control. The gutting of our ability to serve our clients has left the state without a functioning criminal justice system—and without the political will to rebuild one.

And the funding for all of this falls squarely on the counties. Which means the more rural counties are, once again, hit disproportionately hard with the problems. If King County is having problems attracting attorneys—how much more so Stevens or Ferry? Where is Garfield County going to get their additional attorneys from? How in the world does Okanogan County—already in trouble—triple their staff?

The WSBA has acted at the whim of King County—and sacrificed the rest of us in doing so. Mason County has, as a result, gone from having an office to be proud of to a criminal justice system teetering into crisis.

In short, the WSBA has given us a year to get our doomsday bunkers built before the purge begins.

Peter Jones
Shelton

NATIONAL VOLUNTEER

WEEK IS

♥ APRIL 21-27, 2024 ♥



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