

# Kelso City Council Agenda

Regular Meeting, 6:00 pm  
August 19, 2014  
City Hall, Council Chambers  
203 South Pacific  
Kelso, WA 98626



\*\*Special accommodations for the handicapped and hearing impaired are available  
by special arrangement through the City Clerk's Office at 360-423-0900\*\*

## **Invocation:**

Pastor Russ Tevis, Central Christian Church

## **Roll Call to Council Members:**

### **1. Approve Minutes:**

1.1. August 5, 2014 – Regular Meeting

### **2. Consent Items:**

2.1. Auditing of Accounts

### **3. Citizen Business:**

### **4. Council Business:**

4.1. Lodging Tax Advisory Council Recommendations

### **5. Action/Motion Items:**

5.1. Ordinance, 1<sup>st</sup> Reading

5.1.1. 2014 Budget Amendment

5.2. Ordinance, 1<sup>st</sup> Reading

Amend KMC 12.120.120, Liquor consumption in parks

5.3. Resolution

5.3.1. Adoption of Public Defense Standards

## **Other Items:**

- City Manager Report
- Staff/Dept Head Reports
- Council Reports

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- Other Business
- Executive Session

Chaplain Doug Fields, Cowlitz County Chaplaincy, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor David Futcher. Councilmembers in attendance were: Futcher, Franklin, Roberson, Schimmel, Archer, and Myers. Councilmember McDaniel was absent.

**Minutes:** Upon motion by Councilmember Myers, seconded by Councilmember Schimmel, 'Approve the Minutes of the 7/15/14 Regular Meeting,' motion carried, all voting yes.

**PROCLAMATIONS:**

Mayor Futcher read a proclamation declaring August 5, 2014, as **“National Night Out”** in the City of Kelso. Kelso Police Chief Andrew Hamilton accepted the proclamation.

Mayor Futcher read a proclamation declaring Chief Matty as **“Chief for a Day”** on August 21, 2014, in the City of Kelso. Matthew James Graffignino and Chief Hamilton accepted the proclamation.

**CONSENT AGENDA:**

1. **Contract Award:** North Kelso Avenue CHAP Overlay, Lakeside Industries, Inc.

Upon motion by Councilmember Roberson, seconded by Councilmember Schimmel, 'Approve the Consent Agenda,' motion carried, all voting yes.

**CITIZEN BUSINESS:**

**COUNCIL BUSINESS:**

**MOTION ITEMS:**

**MANAGER’S REPORT:**

**Steve Taylor:** No report.

**COUNCIL REPORTS:**

**Jared Franklin:** No report.

**Rick Roberson:** No report.

**Dan Myers:** No report.

**Gary Archer:** No report.

**Gary Schimmel:** No report.

**David Futcher:** No report.

There being no further business, Mayor Futcher adjourned the meeting at 6:09 p.m.

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**MAYOR**

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**CITY CLERK**

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

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**SUBJECT TITLE:**

2015 Lodging Tax Request

Agenda Item: \_\_\_\_\_

Dept. of Origin: Lodging Tax Committee

For Agenda of: August 19, 2014

**PRESENTED BY:**

City Manager: Steve Taylor

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**AGENDA ITEM ATTACHEMENTS:**

May 16, 2014 - Meeting Minutes

August 15, 2014 – Draft Meeting Minutes

Exhibit A - 2015 LTAC Request Summary Spreadsheet

**SUMMARY STATEMENT:**

On August 15, 2014 an LTAC meeting will be held to discuss the distribution of 2015 Lodging Tax Funds. Exhibit A is a summary of the project applications that were received and the amounts that were requested; the recommended allocations will be provided to Council after the LTAC meeting adjourns.

The projected revenue for the Stadium Fund in 2015 is \$140,000. The sum of requested funds for 2015 total \$144,715 which includes the ongoing commitments of \$7,650 to the Big Idea Fund and \$8,500 to Kelso Youth Baseball infrastructure improvements.

The minutes will be included in the update provided to Council after the LTAC meeting and will give detail on the recommendation process. The Council does not have to fund the full list as recommended by the LTAC and can choose to make awards in the recommended amounts to all, some, or none of the candidates on this list. If council would like to modify the allocated amounts a recommendation outlining the desired adjustments must be submitted to the LTAC committee for consideration.

**RECOMMENDED ACTION:**

Move to approve the recommended allocation of the City's Lodging Tax funds for 2015.

**Exhibit B**

**2015 Kelso Lodging Tax Request Summary**

<b>Agency</b>	<b>Contact</b>	<b>Project</b>	<b>Amount Requested</b>	<b>Recommend Funding (yes or no)</b>	<b>Recommended Amount</b>	<b>Received money prior</b>	<b>Comments</b>	<b>Contract</b>
Cowlitz County Historical Museum	David Freece	2015 Historical Museum	\$15,000			Yes \$15,000		
Unique Tin Car Club	Phil Williams	Unique Tin Car Show and Cruise	\$2,000			No		
Kelso Longview Chamber of Commerce	Bill Marcum	Kelso Visitor's Center	\$52,000			Yes \$50,500		
Kelso Highlander Festival Commission	Cory Mugaas	Kelso Highlander Festival	\$20,000			Yes \$15,000		
Kelso Powwow Committee	Michael Brock	Kelso "In Honor of our Children" Powwow	\$2,000			Yes \$500		
City of Kelso	Steve Taylor	Longview PDA feasibility study	\$7,615			Yes \$15,000		
Mark Morris Booster Club	Bill Backamus	Bud Clary War of the Border	\$1,000			No		
Lower Columbia College Athletics	Kirk Roland	NWAC Baseball Championships	\$3,000			Yes \$2,000		
Lower Columbia College Athletics	Kirk Roland	LC Women's Holiday Basketball Tourney	\$1,000			Yes \$800 (awarded for use in 2013)		
Lower Columbia College Athletics	Kirk Roland	2015 Red Devil Classic Basketball Tournament	\$1,000			Yes \$1,000		
KDRA	Mike Julian	The Highlander Iron Horse Motorcycle Rally	\$4,000			Yes, \$500		
Columbia Theater	Gian Morelli	Columbia Theater	\$20,000			Yes \$10,000		
<b>Subtotal</b>			\$128,615					
On Going Commitment		Big Idea	\$7,650	<b>Yes</b>	\$7,650			
Gen Fund Loan Repayment		Kelso Youth Baseball Capital Improvements	\$8,500	<b>Yes</b>	\$8,500			
<b>Total</b>			<b>\$144,765</b>		<b>\$16,150</b>			

**Total Estimated Revenue**

**\$140,000**

## AGENDA SUMMARY SHEET

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AGENDA ITEM: Ordinance 1st reading.  
Budget revision #3 for the 2014 fiscal  
year.

SUBMITTED BY: Brian Butterfield

AGENDA ITEM # \_\_\_\_\_  
FOR AGENDA OF: 8/19/2014  
ORIGINATING DEPT: Finance  
DATE SUBMITTED: 8/7/2014  
COST OF ITEM: \_\_\_\_\_  
AMT. BUDGETED \_\_\_\_\_  
CITY ATTY. APPROVAL \_\_\_\_\_  
CITY MGR. APPROVAL \_\_\_\_\_

AGENDA ITEM PAPERWORK:  
See attached Ordinance

### SUMMARY STATEMENT/DEPT. RECOMMENDATION:

Revisions include the following:

**General Fund**

- \$160,000 loan to Arterial Street Fund to retire Public Works Trust Fund debt.
- \$105,000 pass-thru of grant funds received by FAA to the SW Washington Regional Airport.
- \$20,000 for parking lot improvements at the Kelso Visitor's Center. Funded by County Grant.

**Street Fund**

- \$70,000 to fund new position in the Street Fund. Funded by Street reserves.

**General Fund**

- \$160,000 to retire Public Works Trust Fund debt.
- \$120,000 for West Main Streetscape Project. Funded by County Grant.

**Library Fund**

- \$7,700 to replace overhead door and phone system maintenance. Funded by Library reserves.

**Stadium Fund**

- \$15,250 to fund Big Idea projects from 2012 and 2013. Funded by Stadium Fund reserves.

**Park Fund**

- \$20,300 to fund unforeseen operating expenditures. Funded by reserves.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO RELATING TO PUBLIC EXPENDITURES AND DECLARING AN EMERGENCY UNDER THE PROVISIONS OF RCW 35A.34.150, FIXING THE AMOUNT OF MONEY REQUIRED TO MEET SUCH EMERGENCIES AND AUTHORIZING THE EXPENDITURE OF MONEY NOT PROVIDED FOR IN THE 2013-2014 BIENNIAL BUDGET OF THE CITY.**

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1.** That by reason of the inability of the City and its officials to foresee and compute with accuracy the actual revenue and necessary expenditures of public funds for the current expenses of the City, an emergency is hereby declared under the provisions of RCW 35A.34.150, and it is deemed necessary to make the following amendment to the budget by increasing the following line items by the amounts set forth below for the 2014 Budget, to-wit:

**GENERAL FUND**

Revenues

001-00-308-00-00	Beginning Fund Balance - Restricted	\$ 59,031.00
001-00-308-00-00	Beginning Fund Balance - Unrestricted	160,000.00
001-00-337-00-00	Rural County Fund Grant	20,000 00
001-00-333-00-00	Federal Grant – FAA Pass-thru.	<u>45,969.00</u>
		\$ 285,000.00

Expenditures

001-09-581-10-00-0	Interfund Loan to Arterial Streets	\$ 160,000.00
001-09-594-19-61-0	Parking Lot Improvements	20,000.00



001-12-546-10-41-0	FAA Grant Pass-thru	<u>105,000.00</u>
		\$ 285,000.00

**STREET FUND**

Revenues

101-18-308-00-00	Beginning Fund Balance	\$ 70,000.00
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Expenditures

101-16-542-30-10-0	Salaries	\$ 45,000.00
101-16-542-30-12-0	Overtime	4,000.00
101-16-542-30-20-0	Benefits	<u>21,000.00</u>
		\$ 70,000.00

**ARTERIAL STREET FUND**

Revenues

102-18-337-00-00	Rural County Fund Grant	\$ 120,000 00
102-18-381-10-00	Interfund Loan – General Fund	<u>160,000 00</u>
		\$ 280,000.00

Expenditures

102-18-591-45-78-0	PWTF Principal Payment	\$ 160,000.00
102-18-595-14-00-3	West Main Streetscape	<u>120,000.00</u>
		\$ 280,000.00

**LIBRARY FUND**

Revenues

103-19-308-00-00	Beginning Fund Balance	\$ 7,700.00
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Expenditures

103-19-572-50-42-1	Telephone	\$ 3,500.00
103-19-572-50-45-1	Facilities Rent	<u>4,200.00</u>
		\$ 7,700.00

**STADIUM FUND**

Revenues

106-20-308-00-00	Beginning Fund Balance	\$ 15,250.00
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Expenditures

106-20-573-90-49-3	The Big Idea	\$ 15,250.00
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**PARK FUND**

Revenues

108-21-308-00-00	Beginning Fund Balance	\$ 20,300.00
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Expenditures

108-21-576-80-11-0	Part-time Salaries	\$ 4,000.00
108-21-576-80-48-3	Vehicle Maintenance	3,500.00
108-21-576-80-91-1	Interfund Services - Engineering	7,000.00
108-21-576-80-91-3	Interfund Services - Admin	<u>5,800.00</u>
		\$ 20,300.00

**SECTION 2.** It is hereby ordered that the aforesaid sum be and the same is hereby appropriated in excess of the budget of the City of Kelso for 2014 and further that said budget be and the same is hereby amended accordingly.

**SECTION 3.** This Ordinance shall be in full force and effect five days after its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_\_ day of September, 2014.

\_\_\_\_\_  
MAYOR

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED: \_\_\_\_\_

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

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### **SUBJECT TITLE:**

An Ordinance of the City of Kelso amending KMC 12.20.120 to give the City Manager or his or her designee the authority to approve liquor consumption in the parks.

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** Community Dev./Engineering

**For Agenda of:** August 19, 2014

**Cost of Item:** \_\_\_\_\_

### **PRESENTED BY:**

Michael Kardas, P.E.  
Community Development Director/City Engineer

**City Manager:** Steve Taylor

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### **AGENDA ITEM ATTACHMENTS:**

Proposed Ordinance

### **SUMMARY STATEMENT:**

The proposed ordinance changes the park code to grant, the City Manager or his or her designee, the authority to allow liquor consumption in the parks with an associated permit. This change eliminates the need for these requests to be brought to Council for approval, and instead will become a part of the Special Event permitting process.

### **FINANCIAL SUMMARY:**

There is no cost for the ordinance. Signage changes may be costs of implementation.

### **RECOMMENDED ACTION:**

Move to pass the ordinance on first reading.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO AMENDING KMC 12.20.120 PARK CODE TO TRANSFER THE AUTHORITY OF PARK LIQUOR CONSUMPTION APPROVAL FROM THE COUNCIL TO THE CITY MANAGER OR THEIR DESIGNEE**

WHEREAS, the City Manager would like to simplify the current Special Event permitting process;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1.** That KMC 12.20.120 is hereby amended to provide as follows:

**12.20.120 Intoxicating liquor.**

It is unlawful to consume in any park any whiskey, wine, beer or other intoxicating liquor except as may be permitted under a license or permit issued by the State Liquor Control Board and authorized by the ~~city council~~ City Manager or his or her designee.

**SECTION 2. EFFECTIVE DATE.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED: \_\_\_\_\_

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

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**SUBJECT TITLE: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO, WASHINGTON REPEALING RESOLUTION NO. 98-784 AND ADOPTING THE APPROVED STANDARDS FOR INDIGENT DEFENSE SERVICES.**

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ City Manager \_\_\_\_\_

**For Agenda of:** August 19, 2014 \_\_\_\_\_

**Originator:** \_\_\_\_\_

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

**PRESENTED BY:**

Janean Parker

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### **Agenda Item Attachments:**

Proposed Resolution

Exhibit A - The Washington State Bar Association Board of Governors Standards for Indigent Defense Services approved June 3, 2011

Exhibit B - Supreme Court of Washington Order No. 25700-A-1004

Exhibit C - Supreme Court of Washington Order No. 25700-A-1007

### **SUMMARY STATEMENT:**

On March 17, 1998, the City adopted standards for the delivery of public defense services in accordance with requirements set by the Washington Supreme Court and consistent with the standards set forth by the American Bar Association. Recent court decisions have changed those standards most notably by dramatically reducing the allowable caseloads for public defenders. Our current public defense service contract handles approximately 800 cases, the new standards allows for a maximum of 400 cases per attorney; this reduction will have significant budgetary impacts. The proposed resolution repeals our previously adopted standards, adopts new standards outlined in The Washington State Bar Association Board of Governors Standards for Indigent Defense Services, and complies with Washington Supreme Court Order No. 25700-A-1004 and has been recommended by the City's insurance provider to protect against litigation.

### **RECOMMENDED ACTION:**

Move to adopt the Resolution to update the City's standards for indigent defense services.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO,  
WASHINGTON REPEALING RESOLUTION NO. 98-784 AND  
ADOPTING THE APPROVED STANDARDS FOR INDIGENT DEFENSE  
SERVICES.**

WHEREAS, the Revised Code of Washington (RCW) 10.101.030 requires that cities adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office, and;

WHEREAS, the standards shall include the following: Compensation of counsel, duties, and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination.

WHEREAS, the City of Kelso adopted the suggested standards of the Washington State Bar Association on March 17, 1998, and;

WHEREAS, Standards for Indigent Defense Services were approved by the Washington State Bar Association Board of Governors on June 3, 2011, and;

WHEREAS, the Supreme Court of Washington considered amendments and comments submitted did adopt Order No. 257-A-1004 on June 15, 2012 to aid in the prompt and orderly administration of justice, and;

WHEREAS, in furtherance of this effort and in accordance with RCW Chapter 10.101, the City shall adopt the approved standards for the delivery of public defense services;

NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO HEREBY RESOLVE AS  
FOLLOWS:

**SECTION 1.** Resolution No. 98-784 which adopted suggested standards March 17, 1998 is hereby repealed.

**SECTION 2.** The Washington State Bar Association Board of Governors Standards for Indigent Defense Services approved June 3, 2011 and attached as Exhibit "A", the Supreme Court of Washington Order No. 25700-A-1004 attached as Exhibit "B", and the Supreme Court of Washington Order No. 25700-A-1007 attached as Exhibit "C" are effective immediately.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_

MAYOR

ATTEST/AUTHENTICATION:

\_\_\_\_\_

CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_

CITY ATTORNEY





Washington State Bar Association

## **Standards for Indigent Defense Services**

[Approved by the Board of Governors June 3, 2011]

## **STANDARD ONE: Compensation**

### **Standard:**

Public defense attorneys and staff should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be comparable to those of attorneys and staff in prosecutorial offices in the area.

For assigned counsel, reasonable compensation should be provided. Compensation should reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the case. Assigned counsel should be compensated for out-of-pocket expenses.

Contracts should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, including, but not limited to, death penalty cases. Services which require extraordinary fees shall be defined in the contract.

Attorneys who have a conflict of interest shall not have to compensate the new, substituted attorney out of their own funds.

Flat fees, caps on compensation, and lump-sum contracts for trial attorneys are improper in death penalty cases. Private practice attorneys appointed in death penalty cases should be fully compensated for actual time and service performed at a reasonable hourly rate with no distinction between rates for services performed in court and out of court. Periodic billing and payment should be available. The hourly rate established for lead counsel in a particular case should be based on the circumstances of the case and the attorney being appointed, including the following factors: the anticipated time and labor required in the case, the complexity of the case, the skill and experience required to provide adequate legal representation, the attorney's overhead expenses, and the exclusion of other work by the attorney during the case. Under no circumstances should the hourly rate for lead counsel, whether private or public defender, appointed in a death penalty case be less than \$125 per hour (in 2006 dollars).

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 5-2.4 and 5-3.1.

American Bar Association, *Guidelines for the Appointment and Performance in Death Penalty Cases*, 1988, Standard 10-1.

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.7 and 13.11.

National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-4.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-10 and III-11.

Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline No. 6.

## **STANDARD TWO: Duties and Responsibilities of Counsel**

### **Standard:**

The legal representation plan shall require that defense services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the interests of the client.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 4-1.1, 5-5.1 and 5-1.1.

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.1.

National Legal Aid and Defender Association, *Standards for Defender Services*, Standard II-2.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-18.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

## **STANDARD THREE: Caseload Limits and Types of Cases**

### **Standard:**

1. The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
2. The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. 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. As used in this Standard, "quality representation" is intended to describe the minimum level of attention, care and skill that Washington citizens would expect of their state's criminal justice system.
3. **General Considerations:** Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload ceilings. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward more serious offenses or case types that

demand more investigation, legal research and writing, use of experts and/or social workers or other expenditure of time and resources. In particular, felony caseloads should be assessed by the workload required, and certain cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

**Definition of case:** A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation.

4. **Caseload Limits:** The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

150 Felonies per attorney per year; or

300 Misdemeanor cases per attorney per year; or in certain circumstances described below the caseload may be adjusted to no more than 400 cases, depending upon:

- The caseload distribution between simple misdemeanors and complex misdemeanors; or
- Jurisdictional policies such as post-filing diversion and opportunity to negotiate resolution of large number of cases as non-criminal violations;
- Other court administrative procedures that permit a defense lawyer to handle more cases; 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 cases 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 *supra*; or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. (*The 36 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.*)

## **Related Standards**

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, Formal Opinion 06-441. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

*ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases*, (1996)  
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-I.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

## **STANDARD FOUR: Responsibility for Expert Witnesses**

### **Standard:**

Reasonable compensation for expert witnesses necessary to preparation and presentation of the defense case shall be provided. Expert witness fees should be maintained and allocated from funds separate from those provided for defender services. Requests for expert witness fees should be made through an ex parte motion. The defense should be free to retain the expert of its choosing and in no cases should be forced to select experts from a list pre-approved by either the court or the prosecution.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 5-1.4.

National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV 2d, 3.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1983, Standard III-8d.

National Advisory Commission, Task Force on Courts, 1973, Standard 13.14.

## **STANDARD FIVE: Administrative Costs**

### **Standard:**

1. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.
2. Public defense attorneys shall have an office that accommodates confidential meetings with clients and receipt of mail, and adequate telephone services to ensure prompt response to client contact.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice, Providing Defense Services*.

National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, (1976), Guideline 3.4.

National Legal Aid and Defender Association, *Standards for Defender Services*, 1976 I-3, IV 2a-e, IV 5.

## **STANDARD SIX: Investigators**

### **Standard:**

1. Public defense attorneys shall use investigation services as appropriate.
2. Public defender offices, assigned counsel, and private law firms holding public defense contracts should employ investigators with investigation training and experience. A minimum of one investigator should be employed for every four attorneys.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 4-4.1 and 5-1.14.

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.14.

National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-3.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-9.

Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 8.

## **STANDARD SEVEN: Support Services**

### **Standard:**

Public defense attorneys shall have adequate numbers of investigators, secretaries, word processing staff, paralegals, social work staff, mental health professionals and other support services, including computer system staff and network administrators. These professionals are essential to ensure the effective performance of defense counsel during trial preparation, in the preparation of dispositional plans, and at sentencing.

1. Legal Assistants - At least one full-time legal assistant should be employed for every four attorneys. Fewer legal assistants may be necessary, however, if the agency or attorney has access to word processing staff, or other additional staff performing clerical work. Defenders should have a combination of technology and personnel that will meet their needs.
2. Social Work Staff - Social work staff should be available to assist in developing release, treatment, and dispositional alternatives.
3. Mental Health Professionals - Each agency or attorney should have access to mental health professionals to perform mental health evaluations.
4. Investigation staff should be available as provided in Standard Six at a ratio of one investigator for every four attorneys.
5. Each agency or attorney providing public defense services should have access to adequate and competent interpreters to facilitate communication with non-English speaking and hearing-impaired clients for attorneys, investigators, social workers, and administrative staff.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 4-8.1 and 5-1.4.

National Advisory Committee on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.14.

National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-3.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-8.

Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 7.

## **STANDARD EIGHT: Reports of Attorney Activity**

### **Standard:**

The legal representation plan shall require that the defense attorney or office maintain a case-reporting and management information system which includes number and type of cases, attorney hours and disposition. This information shall be provided regularly to the

Contracting Authority and shall also be made available to the Office of the Administrator of the Courts. Any such system shall be maintained independently from client files so as to disclose no privileged information.

A standardized voucher form shall be used by assigned counsel attorneys seeking payment upon completion of a case. For attorneys under contract, payment should be made monthly, or at times agreed to by the parties, without regard to the number of cases closed in the period.

**Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 5-3.3 (b) xii, The Report to the Criminal Justice Section Council from the Criminal Justice Standards Committee, 1989.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984 Standard III-22.

National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Guideline 3.4, 4.1, and 5.2.

**STANDARD NINE: Training**

**Standard:**

The legal representation plan shall require that attorneys providing public defense services participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice.

In offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held to inform them of office procedure and policy. All attorneys should be required to attend regular in-house training programs on developments in criminal law, criminal procedure and the forensic sciences.

Attorneys in civil commitment and dependency practices should attend training programs in these areas. Offices should also develop manuals to inform new attorneys of the rules and procedures of the courts within their jurisdiction.

Every attorney providing counsel to indigent accused should have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and other media.

**Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 5-1.4.

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.16.

National Legal Aid and Defender Association, *Standards for Defender Services*, Standard V.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-17.



Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 3.

National Legal Aid and Defender Association, *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases*, 1988, Standard 9.1.

## **STANDARD TEN: Supervision**

### **Standard:**

Each agency or firm providing public defense services should provide one full-time supervisor for every ten staff lawyers or one half-time supervisor for every five lawyers. Supervisors should be chosen from among those lawyers in the office qualified under these guidelines to try Class A felonies. Supervisors should serve on a rotating basis, and except when supervising fewer than ten lawyers, should not carry caseloads.

### **Related Standards:**

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.9.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contract*, 1984, Standard III-16.

Seattle-King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Guideline Number 4.

## **STANDARD ELEVEN: Monitoring and Evaluation of Attorneys**

### **Standard:**

The legal representation plan for provision of public defense services should establish a procedure for systematic monitoring and evaluation of attorney performance based upon publicized criteria. Supervision and evaluation efforts should include review of time and caseload records, review and inspection of transcripts, in-court observations, and periodic conferences.

Performance evaluations made by a supervising attorney should be supplemented by comments from judges, prosecutors, other defense lawyers and clients. Attorneys should be evaluated on their skill and effectiveness as criminal lawyers or as dependency or civil commitment advocates.

### **Related Standards:**

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Standard III-16.

National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Recommendations 5.4 and 5.5.

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.9.

## **STANDARD TWELVE: Substitution of Counsel**

### **Standard:**

The attorney engaged by local government to provide public defense services should not sub-contract with another firm or attorney to provide representation and should remain directly involved in the provision of representation. If the contract is with a firm or office, the contracting authority should request the names and experience levels of those attorneys who will actually be providing the services, to ensure they meet minimum qualifications. The employment agreement shall address the procedures for continuing representation of clients upon the conclusion of the agreement. Alternate or conflict counsel should be available for substitution in conflict situations at no cost to the counsel declaring the conflict.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, Standard 5-5.2.

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.1.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-23.

## **STANDARD THIRTEEN: Limitations on Private Practice**

### **Standard:**

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 4-1.2(d), 5-3.2.

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, Formal Opinion 06-441. [\[Link\]](#)

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.7.

National Legal Aid and Defender Association, *Standards for Defender Services*, Standard III-3 and IV-1.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Guideline III-6.

## **STANDARD FOURTEEN: Qualifications of Attorneys**

### **Standard:**

**1. In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:**

- A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and
- B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
- C. Be familiar with the Washington Rules of Professional Conduct; and
- D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
- E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
- F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
- G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

**2. Trial attorneys' qualifications according to severity or type of case<sup>1</sup>:**

- A. Death Penalty Representation. Each attorney acting as lead counsel in a death penalty case or an aggravated homicide case in which the decision to seek the death penalty has not yet been made shall meet the following requirements:
  - i. The minimum requirements set forth in Section 1; and
  - ii. At least five years criminal trial experience; and
  - iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
  - iv. Have served as lead or co-counsel in at least one jury trial in which the death penalty was sought; and
  - v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and

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<sup>1</sup> Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

- vi. Have completed at least one death penalty defense seminar within the previous two years; and
- vii. Meet the requirements of SPRC 2.<sup>2</sup>

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

**B. Adult Felony Cases - Class A.** Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served two years as a prosecutor; or
  - b. has served two years as a public defender; or two years in a private criminal practice, and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

**C. Adult Felony Cases - Class B Violent Offense.** Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served one year as prosecutor; or
  - b. has served one year as public defender; or one year in a private criminal practice; and

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<sup>2</sup>SPRC 2 APPOINTMENT OF COUNSEL

*At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.*

*A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.*

*At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [\[Link\]](#)*

- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.
- D. Adult Sex Offense Cases. Each attorney representing a client in an adult sex offense case shall meet the following requirements:
- i. The minimum requirements set forth in Section 1 and Section 2(C); and
  - ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.
- E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:
- i. The minimum requirements set forth in Section 1, and
  - ii. Either:
    - a. has served one year as a prosecutor; or
    - b. has served one year as a public defender; or one year in a private criminal practice; and
  - iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
  - iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.
- F. Persistent Offender (Life Without Possibility of Release) Representation. Each attorney acting as lead counsel in a “two-strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:
- i. The minimum requirements set forth in Section 1;<sup>3</sup> and
  - ii. Have at least:
    - a. four years criminal trial experience; and
    - b. one year experience as a felony defense attorney; and
    - c. experience as lead counsel in at least one Class A felony trial; and
    - d. experience as counsel in cases involving each of the following:

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<sup>3</sup> RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

1. Mental health issues; and
  2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
  3. Expert witnesses; and
  4. One year of appellate experience or demonstrated legal writing ability.
- G. Juvenile Cases - Class A. Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:
- i. The minimum requirements set forth in Section 1, and
  - ii. Either:
    - a. has served one year as a prosecutor; or
    - b. has served one year as a public defender; one year in a private criminal practice; and
  - iii. Has been trial counsel alone of record in five Class B and C felony trials; and
  - iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.
- H. Juvenile Cases - Classes B and C. Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:
- i. The minimum requirements set forth in Section 1; and
  - ii. Either:
    - a. has served one year as a prosecutor; or
    - b. has served one year as a public defender; or one year in a private criminal practice, and
  - iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
  - iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.
- I. Juvenile Sex Offense Cases. Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:
- i. The minimum requirements set forth in Section 1 and Section 2(H); and
  - ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.
- J. Juvenile Status Offenses Cases. Each attorney representing a client in a “Becca” matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and

- ii. Either:
  - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
  - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.
- K. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.
- L. Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:
  - i. The minimum requirements as outlined in Section 1; and
  - ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.
  - iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
  - iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.
- M. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:
  - i. The minimum requirements set forth in Section 1; and
  - ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
  - iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
    - a. served one year as a prosecutor, or
    - b. served one year as a public defender, or one year in a private civil commitment practice, and
    - c. been trial counsel in five civil commitment initial hearings; and
  - iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.
- N. Sex Offender “Predator” Commitment Cases. Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:
  - i. The minimum requirements set forth in Section 1; and

- ii. Have at least:
  - a. Three years criminal trial experience; and
  - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
  - c. Experience as lead counsel in at least one felony trial; and
  - d. Experience as counsel in cases involving each of the following:
    - 1. Mental health issues; and
    - 2. Sexual offenses; and
    - 3. Expert witnesses; and
  - e. Familiarity with the Civil Rules; and
  - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

- O. Contempt of Court Cases. Each attorney representing a respondent shall meet the following requirements:
  - i. The minimum requirements set forth in Section 1; and
  - ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.
- P. Specialty Courts. Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:
  - i. The minimum requirements set forth in Section 1; and
  - ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
  - iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

### **3. Appellate Representation.**

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and
- B. Either:
  - i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or



- ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
- C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

**RALJ Misdemeanor Appeals to Superior Court:** Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

#### **4. Legal Interns.**

- A. Legal interns must meet the requirements set out in APR 9.
- B. Legal interns shall receive training pursuant to APR 9 and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

#### **Related Standards:**

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.15.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Public Defense Contracts*, 1984, Standard III-7.

National Legal Aid and Defender Association, *Standards for the Appointment and Performance of Counsel in Death Penalty Cases*, 1987, Standard 5.1.

### **STANDARD FIFTEEN: Disposition of Client Complaints**

#### **Standard:**

Each agency or firm or individual contract attorney providing public defense services shall have a method to respond promptly to client complaints. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the contracting authority or public defense administrator should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. The complaining client should be informed as to the disposition of his or her complaint within one week.

#### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, 4-5.1 and 4-5.2.

## **STANDARD SIXTEEN: Cause for Termination of Defender Services and Removal of Attorney**

### **Standard:**

Contracts for indigent defense services shall include the grounds for termination of the contract by the parties. Termination of a provider's contract should only be for good cause. Termination for good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of the standards herein addressed.

Removal by the court of counsel from representation normally should not occur over the objection of the attorney and the client.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, Standard 5-1.3, 5-5.3.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline III-5.

National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, 1976, Recommendations 2.12 and 2.14.

National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standard 13.8.

## **STANDARD SEVENTEEN: Non-Discrimination**

### **Standard:**

Neither the Contracting Authority, in its selection of an attorney, firm or agency to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, gender, sexual orientation or disability. Both the contracting authority and the contractor shall comply with all federal, state, and local non-discrimination requirements.

### **Related Standards:**

American Bar Association, *Standards for Criminal Justice*, Providing Defense Services, Standard 5-3.1.

National Legal Aid and Defender Association, *Standards for Defender Services*, 1976, Standard III-8.

## **STANDARD EIGHTEEN: Guidelines for Awarding Defense Contracts**

### **Standard:**

The county or city should award contracts for public defense services only after determining that the attorney or firm chosen can meet accepted professional standards.

Under no circumstances should a contract be awarded on the basis of cost alone. Attorneys or firms bidding for contracts must demonstrate their ability to meet these standards.

Contracts should only be awarded to a) attorneys who have at least one year's criminal trial experience in the jurisdiction covered by the contract (i.e., City and District Courts, Superior Court or Juvenile Court), or b) to a firm where at least one attorney has one year's trial experience.

City attorneys, county prosecutors, and law enforcement officers should not select the attorneys who will provide indigent defense services.

**Related Standards:**

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard IV-3.

King County Bar Association Indigent Defense Services Task Force, *Guidelines for Accreditation of Defender Agencies*, 1982, Statement of Purpose.

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW )  
STANDARDS FOR INDIGENT DEFENSE AND )  
CERTIFICATION OF COMPLIANCE )  
\_\_\_\_\_)  
\_\_\_\_\_)

**ORDER**  
NO. 25700-A- 1004

The Washington State Bar Association having recommended the adoption of New Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the standards and certificate as attached hereto are adopted.
- (b) That the New Standards for Indigent Defense, except Standard 3.4, will be published in the Washington Reports and will become effective September 1, 2012. New Standard 3.4 will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 15<sup>th</sup> day of June, 2012.

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12 JUN 15 AM 8:00  
BY RONALD R. CARPENTER  
CLERK

639/7

IN THE MATTER OF THE ADOPTION OF NEW STANDARDS FOR INDIGENT DEFENSE  
AND CERTIFICATION OF COMPLIANCE

Madsen, C. J.

Chambers, J.

M. Johnson

Wiggins, J.

Stephens, J.

Stephens, J.

Gonzalez, J.

# STANDARDS FOR INDIGENT DEFENSE

The following Standards for Indigent Defense are adopted pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2 and shall have an effective date concurrent with the effectiveness of amendments to those rules approved by the Court July 8, 2010 (effective July 1, 2012);

## **Standard 3: Caseload Limits and Types of Cases**

3.1 The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.

3.2 The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. 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. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.

### **3.3 General Considerations**

Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney’s caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney’s numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

## STANDARDS FOR INDIGENT DEFENSE

**Definition of case:** A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

### 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 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 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.)*

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full time attorneys. *[Effective September 1, 2013]*

### 3.5 Case Counting

The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

- A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
- B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

## STANDARDS FOR INDIGENT DEFENSE

- C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
- D. be periodically reviewed and updated to reflect current workloads; and
- E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

### 3.6 Case Weighting

The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

- A. **Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.
- B. **Case Weighting Downward:** Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.
  - i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).
  - ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions,



## STANDARDS FOR INDIGENT DEFENSE

representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.

- iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.
- iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.
- v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

### Related Standards

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, *Formal Opinion 06-441*. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

# STANDARDS FOR INDIGENT DEFENSE

*ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases*, (1996)  
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-I.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

*Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [\[Link\]](#)

## 5.2 Administrative Costs

- A. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.
- B. Public defense attorneys shall have 1) access to an office that accommodates confidential meetings with clients and 2) a postal address, and adequate telephone services to ensure prompt response to client contact.

## 6.1 Investigators

Public defense attorneys shall use investigation services as appropriate.

## Standard 13: Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

## Standard 14: Qualifications of Attorneys

14.1 In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

- A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

## STANDARDS FOR INDIGENT DEFENSE

- B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
- C. Be familiar with the Washington Rules of Professional Conduct; and
- D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
- E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
- F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
- G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

### 14.2 Attorneys' qualifications according to severity or type of case<sup>1</sup>:

- A. **Death Penalty Representation.** Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:
  - i. The minimum requirements set forth in Section 1; and
  - ii. At least five years criminal trial experience; and
  - iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
  - iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
  - v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
  - vi. Have completed at least one death penalty defense seminar within the previous two years; and
  - vii. Meet the requirements of SPRC 2.<sup>2</sup>

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<sup>1</sup> Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

<sup>2</sup>SPRC 2 APPOINTMENT OF COUNSEL

*At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.*

## STANDARDS FOR INDIGENT DEFENSE

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

### **B. Adult Felony Cases - Class A**

Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served two years as a prosecutor; or
  - b. has served two years as a public defender; or two years in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

### **C. Adult Felony Cases – Class B Violent Offense**

Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

### **D. Adult Sex Offense Cases**

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*A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.*

*At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [\[Link\]](#)*

## STANDARDS FOR INDIGENT DEFENSE

Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

### **E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation**

Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

### **F. Persistent Offender (Life Without Possibility of Release) Representation**

Each attorney acting as lead counsel in a “two-strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;<sup>3</sup> and
- ii. Have at least:
  - a. four years criminal trial experience; and
  - b. one year experience as a felony defense attorney; and
  - c. experience as lead counsel in at least one Class A felony trial; and
  - d. experience as counsel in cases involving each of the following:
    1. Mental health issues; and

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<sup>3</sup> RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

## STANDARDS FOR INDIGENT DEFENSE

2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
3. Expert witnesses; and
4. One year of appellate experience or demonstrated legal writing ability.

### **G. Juvenile Cases - Class A**

Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

### **H. Juvenile Cases - Classes B and C**

Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

### **I. Juvenile Sex Offense Cases**

Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

## STANDARDS FOR INDIGENT DEFENSE

**J. Juvenile Status Offenses Cases.** Each attorney representing a client in a “Becca” matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Either:
  - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
  - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.

**K. Misdemeanor Cases**

Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.

**L. Dependency Cases**

Each attorney representing a client in a dependency matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.
- iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
- iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.

**M. Civil Commitment Cases**

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
- iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
  - a. served one year as a prosecutor, or
  - b. served one year as a public defender, or one year in a private civil commitment practice, and
  - c. been trial counsel in five civil commitment initial hearings; and

## STANDARDS FOR INDIGENT DEFENSE

- iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

### **N. Sex Offender “Predator” Commitment Cases**

Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
  - a. Three years criminal trial experience; and
  - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
  - c. Experience as lead counsel in at least one felony trial; and
  - d. Experience as counsel in cases involving each of the following:
    - 1. Mental health issues; and
    - 2. Sexual offenses; and
    - 3. Expert witnesses; and
  - e. Familiarity with the Civil Rules; and
  - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

### **O. Contempt of Court Cases**

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

### **P. Specialty Courts**

Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.



## STANDARDS FOR INDIGENT DEFENSE

### 14.3 Appellate Representation.

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and
- B. Either:
  - i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
  - ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
- C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

**RALJ Misdemeanor Appeals to Superior Court:** Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

### 14.4 Legal Interns

- A. Legal interns must meet the requirements set out in APR 9.
- B. Legal interns shall receive training pursuant to APR 9 and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

**STANDARDS FOR INDIGENT DEFENSE**

**CERTIFICATION OF COMPLIANCE**

**“Applicable Standards” required by CrR3.1/ CrRLJ 3.1 / JuCR9.2**

**For criminal and juvenile offender cases, a signed certification of compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.**

**The certification must be in substantially the following form:**

**SEPARATE CERTIFICATION FORM**

<p>_____ Court of Washington for</p>
--

Certification of Appointed Counsel of  
Compliance with Standards Required by  
CrR 3.1 / CrRLJ 3.1 / JuCR 9.2

The undersigned attorney hereby certifies:

1. Approximately \_\_\_\_% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
  - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
  - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
  - c. **Investigators:** I have investigators available to me and will use investigation services as

## STANDARDS FOR INDIGENT DEFENSE

appropriate, in compliance with Standard 6.1.

- d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases.  
[Effective 9/1/13: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

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Defendant's Lawyer, WSBA#

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Date

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE SUSPENSION OF THE )  
EFFECTIVE DATE OF THE STANDARDS FOR )  
INDIGENT DEFENSE AND CERTIFICATION OF )  
COMPLIANCE )  
\_\_\_\_\_ )

**ORDER**

NO. 25700-A-1004

By ORDER NO. 25700-A-1004, dated June 15, 2012, the Court adopted Standards for Indigent Defense and Certification of Compliance. The Office of Public Defense (OPD) requested that the Court delay the effective date of September 1, 2012. The Court considered the request to delay the effective date until October 1, 2012.

Now, therefore, it is hereby

ORDERED:

That the previously ordered effective date for the Standards for Indigent Defense and Certification of Compliance of September 1, 2012, is suspended until October 1, 2012, except Standard 3.4 which will become effective September 1, 2013.

DATED at Olympia, Washington this 9th day of August, 2012.

For the Court

Madsen, C. J.  
CHIEF JUSTICE

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2012 AUG -9 A 11:33  
BY RONALD R. CARPENTER  
CLERK

643/58