



**SAN JUAN COUNTY
OFFICE OF THE COUNTY MANAGER**

**REQUEST FOR QUALIFICATIONS FOR
PUBLIC DEFENSE SERVICES
Adult Defense Contract for 2020**

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**REQUEST FOR QUALIFICATIONS FOR PUBLIC DEFENSE SERVICES
ADULT CONTRACT for 2020**

SECTION 1. PROCESS

Pursuant to San Juan County Code (SJCC) 3.24.100 and the Revised Code of Washington (RCW) 36.32.245, contracts for public defense services are exempt from the public bidding process. In reviewing proposals under this informal request for qualifications, San Juan County's Administration Department (the County) shall follow SJCC 3.24.020, which provides in relevant part:

Guidelines for service contracts.

A. For service contracts the County shall:

1. Prepare a brief description of the services to be provided, including the timeframe, quality required, and sketches if appropriate.
2. Review the department's file for a consultant qualified to perform the work.
3. Request a proposal from the identified consultant.
4. Evaluate the proposal on the following basis:
 - a. Price;
 - b. Ability, capacity and skill to perform the work;
 - c. Character, integrity, reputation, judgment, experience and efficiency to perform the work;
 - d. Ability to perform the work within the time specified;
 - e. Quality of work under previous contracts;
 - f. Previous and existing compliance by the consultant with laws relating to those contracts;
 - g. Such other reasonable information as may be secured having a bearing on the decision to make the award.

B. The department head or elected official may accept or reject the proposal for any reason and call for a new proposal from a new consultant.

An attorney interested in applying for San Juan County's adult defense contract for 2020 must submit a Statement of Qualifications consisting of the attorney's qualifications, experience, and statement of interest. This may be in the form of a cover letter and resume (see Section 4, below). The attorney's qualifications will be reviewed by a panel of three County Court administrators, using the above standards.

SECTION 2. SCOPE OF WORK

San Juan County seeks a qualified attorney to provide public defense services for adult defendants in District and Superior Courts in San Juan County for 2020.

The caseloads under these contracts have historically been:

Year	Adult
2019	236 as of 10/15/19
2018	268
2017	186
2016	207

SECTION 3. QUALIFICATIONS

The attorney's qualifications must meet the standards provided in San Juan County Code 2.128: Public Defense Services (see **Attachment A**). An applicant with mental health and substance abuse issues experience is preferred.

In June of 2012 new State Standards for Indigent Defense and Certification of Compliance requirements were adopted by the Legislature. Please review this important information in **Attachment B and C** to be sure you meet these qualifications.

SECTION 4. INSTRUCTIONS FOR SUBMITTALS

Please submit one copy of your Statement of Qualifications that may consist of a resume and cover letter, with a maximum page limit of 10 pages to:

Bridget Bewley

**Administrative Assistant, San Juan County Administration 350
Court Street #5 (mailing)
55 Second Street, Suite 202 (physical location)
Friday Harbor, WA. 98250**

Submittal Deadline:

On or before 3:30 p.m. **Monday, November 18, 2019**. No submittals will be accepted after that date and time. Attorneys will be notified of the decision on or before December 2, 2019. Work under the proposed contract shall commence on **January 1, 2020**.

Questions:

Any questions regarding this project should be directed to Bridget Bewley at (360) 370-7401 or bridgetbe@sanjuanco.com.

Specific project proposals and/or interviews may subsequently be requested.

San Juan County assumes no obligations of any kind for expenses incurred by any respondent to this invitation.

Attachment A**Chapter 2.128
PUBLIC DEFENSE SERVICES**

Sections:

- 2.128.010 Policy, authority and purpose.**
- 2.128.020 Definitions.**
- 2.128.030 Compensation.**
- 2.128.040 Duties and responsibilities of public defense contractors.**
- 2.128.050 Caseload limits and types of cases.**
- 2.128.060 Expert expenses.**
- 2.128.070 Administrative costs.**
- 2.128.080 Investigators.**
- 2.128.090 Support services.**
- 2.128.100 Reports of attorney activity and vouchers.**
- 2.128.110 Training.**
- 2.128.120 Monitoring and evaluation of attorneys.**
- 2.128.130 Substitution of attorneys or assignment of contract.**
- 2.128.140 Limitation on private practice of contract attorneys.**
- 2.128.150 Qualification of attorneys.**
- 2.128.160 Disposition of client complaints.**
- 2.128.170 Cause for termination or removal of attorney.**
- 2.128.180 Nondiscrimination.**
- 2.128.190 Guideline for awarding defense contracts.**

2.128.010 Policy, authority and purpose.

A. Pursuant to the provisions of RCW 10.101.030, San Juan County hereby adopts standards for the delivery of public defense services to indigent persons and persons who are indigent and able to contribute. Public defense services are herein provided by contract or assigned counsel. The standards endorsed by the Washington State Bar Association for the provision of public defense services serve as guidelines for interpreting the below standards.

B. The council delegates to the administrator the authority to implement and oversee the contracts and management for public defense services. The administrator shall submit to the council an annual report at the end of each fiscal year summarizing the annual budget for the public defense services; the annual case load; and an assessment of the quality of the program. (Ord. 40-2009 § 1)

2.128.020 Definitions.

For the purpose of this chapter the following terms, phrases, words, and their derivations shall have the meanings given in this section:

"Administrator" means the County administrator or the person to whom the administrator has delegated the authority to administer the County's public defense contracts.

"Case" means one order appointing the public defense contractors to one client in a single action, resulting in one "file" opened and assigned to a specific attorney. A single appointment and, thus, a case may contain more than one count, and more than one court file number. Actions involving violations of judgments and sentences,

probation and parole, extraditions and detainers, initial probable cause determinations, and all other such matters not involving representation from initial charging through adjudication are counted as follows: three actions equaling one case in the respective court in which the action is heard.

"Council" means the San Juan County council.

"Indigent defendant" means an indigent person as defined under RCW 10.101.010. As referred to in this chapter, the term includes a "client" of public defense contractors.

"Public defense contractors" mean attorneys who have entered into a contract with the council or subcontract with the council's approval to represent indigent defendants.

"Public defense services" means legal representation for indigent defendants at no charge to the indigent defendant in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches, consistent with the statutory and constitutional requirements of state and federal law. (Ord. 40-2009 § 2)

2.128.030 Compensation.

Public defense contractors should be compensated commensurate with the complexity of the case assigned and time required for the case. There should be provisions for extra compensation in cases that require an unusual measure of time or expertise. (Ord. 40-2009 § 3)

2.128.040 Duties and responsibilities of public defense contractors.

A public defense contractor's primary and most fundamental responsibility is to promote and protect the best interests of the client.

Representation shall be provided to all indigent defendants in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable Washington State Bar Association Standards, and the Rules of Professional Conduct for attorneys, case law, and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. (Ord. 40-2009 § 4)

2.128.050 Caseload limits and types of cases.

Caseload limits and types of cases for public defense contractors should allow each attorney to give each client the time and effort necessary to ensure effective representation. No attorney or firm rendering indigent defense services shall accept workloads that, by reason of their excessive size, interfere with the rendering of reasonable and quality representation.

A public defense contractor shall not allow his or her private law practice to interfere with the representation of indigent defendants.

A. Subject only to the consideration of subsection (B) of this section, in a one-year period the appointed attorney should not be expected to handle more than:

1. One hundred fifty felony cases; or
2. Three hundred misdemeanor cases, provided in the following circumstances, the caseload may be adjusted up to no more than 400 cases depending upon:
 - a. The caseload distribution between simple misdemeanors and complex misdemeanors, or
 - b. Jurisdictional policies such as post-filing diversion and opportunity to negotiate resolution of large number of cases as noncriminal violations, or
 - c. Other court administrative procedures that permit a defense lawyer to handle more cases; or
3. Two hundred fifty juvenile offender cases: or

4. Dependency Cases. The number of dependency cases per attorney per year, or the number of open dependency cases at a given time per attorney, shall be determined by a contract between the attorneys and the administrator, with oversight by the Washington State Office of Public Defense.

B. Certain factors not accounted for by RCW 10.101.030 or Standard Three: Caseload Limits and Types of Cases found in the Washington Public Defense Association Standards for Public Defense Services received from the Washington Defense Association as Adopted/Amended by the Committee on Public Defense (September 2007) also bear upon the number of cases a public defense contractor can effectively handle, including but not limited to the severity and complexity of the cases, the prosecutor's resources and practices, the location of the jail and courts relative to the attorney's office, the availability of diversionary disposition programs, the docketing practices of the local courts, the definition of a "case," and the availability of support staff and limited practice personnel.

If the total number of cases handled by the attorney under the public defense contract exceeds 110 percent of the caseloads specified in this section in a given calendar year, or is less than 90 percent of the caseloads specified in this section in a given calendar year, the administrator and the public defense contractor will confer to address an increase or decrease in case load. (Ord. 40-2009 § 5)

2.128.060 Expert expenses.

Public defense contractors shall have reasonable resources for expert witnesses or services in matters where such services are both material and necessary to the defense of the case. A public defense contractor's request for expert witness or services fees under Court Rule 3.1(f) should be made through an ex parte motion. The defense should be free to choose the expert of its choosing and in no case should be forced to select experts from a list preapproved by either the court or the prosecution; provided, that the court determines that such services are both material and necessary to the defense of the case. (Ord. 40-2009 § 6)

2.128.070 Administrative costs.

Attorneys shall be responsible for paying all administrative and overhead expenses of their office or firm not otherwise provided for in these standards or in a contract. Such costs may include law libraries, financial accounting, professional liability insurance, case management systems and other costs incurred in the day-to-day management of the contract. Attorneys shall maintain an office in San Juan County for meetings with clients, when necessary. (Ord. 40-2009 § 7)

2.128.080 Investigators.

The Washington Public Defense Association Standards for Public Defense Services published by the Washington Defense Association as Adopted/Amended by the Committee on Public Defense (September 2007) includes a standard addressing the number of investigators (Standard Six: Investigators). It provides that a minimum of one investigator should be employed for every four attorneys. This standard may be given due consideration in providing investigators for public defense contractors. (Ord. 40-2009 § 8)

2.128.090 Support services.

Public defense contractors should ensure that they are adequately staffed with support staff, including access to mental health professionals and interpreters, depending on the types of cases being assigned. (Ord. 40-2009 § 9)

2.128.100 Reports of attorney activity and vouchers.

Public defense contractors shall maintain a case-reporting and management information system that tracks the number and type of cases and the disposition of each case under an existing contract, and the number and nature of other cases outside of the county by private representation or contract. This information shall be provided on a quarterly basis to the administrator, or on a more frequent basis, if requested by the administrator; provided, that such information does not compromise client confidentiality. (Ord. 40-2009 § 10)

2.128.110 Training.

Public defense contractors shall attend legal training as required by the Washington State Bar Association, and shall document at least seven hours of required training annually in the areas of criminal defense. (Ord. 40-2009 § 11)

2.128.120 Monitoring and evaluation of attorneys.

The administrator may conduct an annual written evaluation of each public defense contractor, which evaluation may include, but is not limited to, review of time and caseload records, in-court observations, review of files, and comments of judges, prosecutors, other defense attorneys, and clients. Attorneys should be evaluated based on their skill and effectiveness in client representation, including the client's communication and satisfaction with the public defense contractor's representation.

Public defense contractors who are the named person or entity in a contract with the County shall also conduct annual written evaluations of the performance of junior or subordinate attorneys, working with or under the public defense contractor, who provide public defense services to the County. Such supervisory public defense contractors shall consult on a periodic basis, not to exceed one year, with the administrator concerning the performance of junior or subordinate attorneys. (Ord. 40-2009 § 12)

2.128.130 Substitution of attorneys or assignment of contract.

Public defense contractors should not subcontract with another attorney or firm to provide representation without the prior written consent of the administrator. (Ord. 40-2009 § 13)

2.128.140 Limitation on private practice of contract attorneys.

Public defense contractors shall be limited in the amount of privately retained work which they may accept. In a one-year period, a public defense contractor shall not be assigned more than a pro rata share of public defense cases in relation to that attorney's additional private practice cases. For example, an attorney with a public defense contract of 75 felonies per year shall not have more than a half-time private practice case load. (Ord. 40-2009 § 14)

2.128.150 Qualification of attorneys.

A. Public defense contractors shall meet the following minimum qualifications:

1. Satisfy the minimum requirements for practicing law in the state of Washington;
2. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area;
3. Be familiar with the collateral consequence of a conviction, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction;
4. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
5. Complete at least seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

8. Trial Attorneys' Qualifications According to Severity or Type of Case.

1. 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:
 - a. The minimum requirements set forth in subsection (A) of this section;
 - b. At least five years' criminal trial experience;
 - c. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion;

- d. Have served as lead or co-counsel in at least one jury trial in which the death penalty was sought:
 - e. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases;
 - f. Have completed at least one death penalty defense seminar within the previous two years; and
 - g. Meet the requirements of Superior Court Special Proceeding Rules - Criminal Rule 2 (SPRC 2). 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.
2. 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:
- a. Minimum requirements set forth in subsection (A) of this section; and
 - b. Either:
 - i. Has served two years as a prosecutor; or
 - ii. Has served two years as a public defender; or two years in private criminal practice; and
 - c. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class B felony cases that have been submitted to a jury.
3. Adult Felony Cases - Class B Violent Offense or Sexual Offense. Each attorney representing a defendant accused of a Class B violent offense or sexual offense as defined in RCW 9A.20.020 shall meet the following requirements:
- a. Minimum requirements set forth in subsection (A) of this section; and
 - b. Either:
 - i. Has served one year as prosecutor; or
 - ii. Has served one year as public defender; or one year in a private criminal practice; and
 - c. 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.
4. Adult Felony Cases - All Other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each staff attorney representing a defendant accused of a Class B felony not defined in subsection (8)(3) of this section 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:
- a. Minimum requirements set forth in subsection (A) of this section; and
 - b. Either:
 - i. Has served one year as a prosecutor; or
 - ii. Has served one year as public defender; or one year in a private criminal practice; and
 - c. 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
 - d. Each attorney shall be accompanied at his or her first felony trial by a supervisor, if available.

5. 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:

- a. The minimum requirements set forth in subsection (A) of this section; and
- b. Have at least:
 - i. Four years' criminal trial experience; and
 - ii. One year's experience as a felony defense attorney; and
 - iii. Experience as lead counsel in at least one Class A felony trial; and
 - iv. Experience as counsel in cases involving each of the following:
 - (A) Mental health issues; and
 - (B) 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
 - (C) Expert witnesses; and
 - (D) One year of appellate experience or demonstrated legal writing ability.

6. Juvenile Cases - Class A Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- a. Minimum requirements set forth in subsection (A) of this section; and
- b. Either has served one year as a prosecutor, one year as a public defender, or one year in a private criminal practice; and
- c. Has been trial counsel alone of record in five Class B and C felony trials; and
- d. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

7. Juvenile Cases - Classes Band C. Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- a. Minimum requirements set forth in subsection (A) of this section; and
- b. Either has served one year as a prosecutor, one year as a public defender, or one year in a private criminal practice; and
- c. Has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- d. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

8. Juvenile Status Offenses Cases. Each attorney representing a client in a "Becca" matter shall meet the following requirements:

- a. Minimum requirements as outlined in subsection (A) of this section; and
- b. Either:
 - i. 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

- ii. Has participated in at least one consultation per case with a more experienced attorney who is qualified under this section.

9. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a gross misdemeanor or condition of confinement shall meet with requirements as outlined in subsection (A) of this section.

10. Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:

- a. Minimum requirements as outlined in subsection (A) of this section; and
- b. Attorneys handling termination hearings shall have six months' dependency experience or have significant experience in handling complex litigation.
- c. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
- d. 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 either with a state office or public defense resource attorney or other attorney qualified under this section.

11. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:

- a. Minimum requirements set forth in subsection (A) of this section; and
- b. Shall not represent a respondent in a 90- or 180-day commitment hearing unless he or she has either:
 - i. Served one year as a prosecutor, or
 - ii. Served one year as a public defender, or one year in a private civil commitment practice, and
 - iii. Been trial counsel in two 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.

12. 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:

- a. Minimum requirements set forth in subsection (A) of this section; and
- b. Have at least:
 - i. Three years' criminal trial experience; and
 - ii. One year's experience as a felony defense attorney or one year's experience as a criminal appeals attorney; and
 - iii. Experience as lead counsel in at least one felony trial; and
 - iv. Experience as counsel in cases involving each of the following:
 - (A) Mental health issues; and

- (B) Sexual offenses; and
- (C) Expert witnesses; and
- v. Familiarity with the Civil Rules; and
- vi. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment case should meet the minimum requirements in subsection (A) of this section and have either one year's experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

13. Contempt of Court Cases. Each attorney representing a respondent shall meet the following requirements:

- a. Minimum requirements set forth in subsection (A) of this section; and
- b. Each attorney shall participate in at least one consultation with a state office or public defense resource attorney or other attorney qualified in this area of practice.

C. RALJ Misdemeanor Appeals to Superior Court. Each attorney who is counsel alone for a case on appeal to the superior court from court of limited jurisdiction should meet the minimum requirements as outlined in subsection (A) of this section, and have had 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. (Ord. 40-2009 § 15)

2.128.160 Disposition of client complaints.

The attorneys who are principal to the public defense contract shall promptly respond to clients who make complaints and should keep a written record of the complaints and the response.

Complaints should be first directed to the attorney handling the case, then to the principal attorney, if not the same attorney. If the complaint cannot be resolved by the respective office, the complaint should be directed to other avenues including the courts or the bar association.

Agreements with public defense contractors who accept conflict cases should include a procedure to respond to client complaints. (Ord. 40-2009 § 16)

2.128.170 Cause for termination or removal of attorney.

Contracts with public defense contractors should only be terminated for cause prior to their expiration, which could include failure of the attorney to render adequate representation to the client, willful disregard of the rights and best interest of the client, violation of the Rules of Professional Conduct, willful disregard of the standards set forth herein, or any such other conduct detrimental to the administration of justice.

Representation in an individual case establishes an inviolable attorney-client relationship. Removing an attorney from a case should ordinarily not occur over the objection of the client. (Ord. 40-2009 § 17)

2.128.180 Nondiscrimination.

Neither the council, the public defense contractors in their hiring practices to provide public defense representation, nor the attorneys selected in their representation of the clients shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or disability.

The council and public defense contractors shall comply with all federal, state and local nondiscrimination requirements. (Ord. 40-2009 § 18)

2.128.190 Guideline for awarding defense contracts.

The administrator should award contracts for public defense services only after it determines that the attorney or firm chosen can meet accepted professional standards and comply with all standards as set forth herein.

The administrator may require, as a condition of awarding any contract, that attorneys selected to provide public defense services maintain office facilities within San Juan County if such shall be necessary for effective representation of clients.

County prosecutors and law enforcement officers shall not select the attorneys who will provide indigent defense services, nor shall they participate in negotiations of contracts for such services, except in the capacity as county civil counsel. (Ord. 40-2009 § 19)



Washington State Bar Association

Standards for Indigent Defense Services

[With amendments and format updates as of September 22, 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 111-10 and 111-11.

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 11-2.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984, Guideline 111-18.

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 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.

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.

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 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 *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.)

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.

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;
 - 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.

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 specific 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, 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*. [\[Link\]](#)

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). [\[Link\]](#)

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 111-Sd.

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 1-3, 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 111-9.

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 111-8.

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 111-22.

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 111-17.

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 111-16.

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 111-16.

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 111-23.

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 111-3 and IV-1.

National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Guideline 111-6.

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:¹**

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 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 aggravated homicide case; and

¹ 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.

- 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 2.²

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.

A. 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. 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.

B. 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

²SPRC 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/](#)

- 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
 - 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.
- C. 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.
- D. 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.
- E. 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 1³; 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
 - (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.

F. 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

³ 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. "

- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.
- G. 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. 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.
- H. 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.
- I. 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.
- J. 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.

- K. 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.
- L. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:
- i. 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.
- M. 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.

- N. Contempt of Court Cases. Each attorney representing a respondent shall meet the following requirements:
 - i. Minimum requirements set forth in Section 1; and
 - ii. Each staff 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.
- O. 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 to inform them of office procedure and policy Standard Nine, Training.

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 111-7.

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 111-5.

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 111-8.

**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
CLERK

2013 AUG 20 A 8:31

BY RONALD K. CARPENTER

[Signature]
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF ADOPTION TO THE
STANDARDS FOR INDIGENT DEFENSE AND
CERTIFICATION OF COMPLIANCE FORM FOR
CrR 3.1, JuCR 9.2 and CrRLJ 3.1

ORDER

NO. 25700-A- 10 **35**

The Washington State Bar Association Council on Public Defense having recommended amendments to the Certification of Compliance Form for CrR 3.1, JuCR 9.2, and CrRLJ 3.1, and the Court having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

That the Certification of Compliance Form attached is adopted and becomes effective upon its publication. The effective dates of Certification of Compliance Form Section 2 (d) and Section 2 (e) is October 1, 2013.

DATED at Olympia, Washington this J.f/"day of -2013.

For the Court

[Signature]
CHIEF JUSTICE

SUPERIOR COURT JUVENILE DEPARTMENT

DISTRICT COURT MUNICIPAL COURT

FOR

CITY OF COUNTY OF _____

STATE OF WASHINGTON

CERTIFICATION BY:

[NAME], [WSBA#]

FOR THE:

[1ST,2ND,3RD,4TH] CALENDAR QUARTER OF [YEAR]

No.: _____

Administrative Filing

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 investigative services as 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 October 1, 2013 for felony and juvenile offender caseloads; effective January 1, 2015 for misdemeanor caseloads: 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.]
 - e. **Case Specific Qualifications:** I am familiar with the specific case qualifications in Standard 14.2, Sections B-K and will not accept appointment in a case as lead counsel unless I meet the qualifications for that case. [Effective October 1, 2013]

Signature, WSBA#

Date