

City of East Wenatchee, Washington

Resolution No. 2016-01

A Resolution of the City of East Wenatchee, Washington authorizing the Mayor to execute an Agreement for Public Defender Services.

1. **Alternate format.**

- 1.1. Para leer este documento en otro formato (español, Braille, leer en voz alta, etc.), póngase en contacto con el vendedor de la ciudad al alternateformat@east-wenatchee.com, al (509) 884-9515 o al 711 (TTY).
- 1.2. To read this document in an alternate format (Spanish, Braille, read aloud, etc.), please contact the City Clerk at alternateformat@east-wenatchee.com, at (509) 884-9515, or at 711 (TTY).

2. **Authority.**

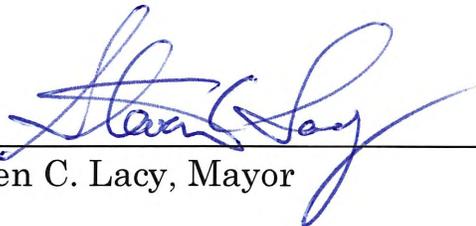
- 2.1. RCW 35A.11.020 and RCW 35A.12.190 authorize the City Council to organize and regulate its internal affairs and to define the powers, functions and duties of its officers and employees.

THE CITY COUNCIL OF THE CITY OF EAST WENATCHEE DO
RESOLVE AS FOLLOWS:

3. **Authorization.** The City Council authorizes the Mayor to execute an Interlocal Agreement that conforms to the language set forth in Exhibit A.
4. **Severability.** If a court of competent jurisdiction declares any provision in this resolution to be contrary to law, such declaration shall not affect the validity of the other provisions of this Resolution.
5. **Effective date.** This Resolution becomes effective immediately.

Passed by the City Council of East Wenatchee, at a regular meeting thereof on this 12th day of January, 2016.

The City of East Wenatchee,
Washington

By 
Steven C. Lacy, Mayor

Attest:


Dana Barnard, City Clerk

Approved as to form only:


Devin Poulson, City Attorney

Filed with the City Clerk: 1/5/16
Passed by the City Council: 1/12/16
Effective Date: 1/12/16

**Agreement
For
Public Defender Services**

1. **Parties.** The parties to this Agreement are the City of East Wenatchee (“City”), a municipal corporation, and Tony DiTommaso and Nicholas A. Yedinak of Kottkamp and Yedinak, PLLC (“Attorneys”).
2. **Scope of Services.** If the East Wenatchee Municipal Court (“Court”) determines that a defendant qualifies for a court-appointed attorney, the City will refer that to the Attorneys. The Attorneys must provide legal representation for a defendant from the time of appointment, through trial and sentencing, and through the filing of a notice of appeal to the Superior Court. The Attorneys may not solicit money from a court-appointed defendant or his/her family during the course of the representation.
3. **Applicant Screening.** Using an independent screening process, the Court” will determine a defendant’s eligibility for appointed counsel. The Court is responsible for handling the screening process. Should the Attorneys determine a defendant is not eligible for assigned counsel; the Attorneys will advise the Court and move withdraw from the case.
4. **Twenty-Four Hour Telephone Access.** Before February 1, 2016, the Attorneys will provide the City Police Department with the telephone number or numbers at which the Attorneys and Associated Counsel can be reached for “critical stage” advice to defendants during the course of a police investigation or arrest twenty-four hours each day.
5. **Associated Counsel.** If licensed to practice law in the state of Washington, an attorney associated with or employed by the Attorneys have the authority to perform the services called for herein. The Attorneys may employ associated counsel to assist at the Attorneys’ expense.
6. **Proof of Professional Liability Insurance.** During the term of this Agreement and any extensions thereof, the Attorneys must secure and maintain policies of comprehensive professional liability insurance with an insurance company licensed to do business in the State of Washington. Said policies must have limits of not less than

\$300,000.00. The Attorneys must file written proof of the insurance policies with the City.

7. Indemnification.

7.1. The Attorneys agree to indemnify and hold the City, its elected officials, officers, and employees harmless from any and all claims, losses or liability, including Attorneys' fees, whatsoever arising out of the Attorneys' performance of obligations pursuant to this Agreement, including claims arising by reason of accident, injury, or death caused to persons or property of any kind occurring by the fault or neglect of the Attorneys, their agents, associates, or employees, or occurring without the fault or neglect of the City.

7.2. With respect to the performance of this Agreement and as to claims against the City, its officers, agents, and employees, the Attorneys expressly waive immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to employees and agree that the obligation to indemnify, defend, and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of the Attorneys. This waiver is mutually negotiated by the parties. This paragraph does not apply to any damage resulting from the sole negligence of the City, its agents, or employees. This obligation to indemnify, defend, and hold harmless is valid and enforceable only to the extent of the negligence of the Attorneys, their officers, agents, and employees.

8. Compensation. The City will pay each Attorney for services rendered, under this Agreement, the sum of \$3,791.16 per month, for a total of \$90,528.00 per year for case assignments. This amount includes the filing of an appeal from Municipal Court to Superior Court. The City will make payment within 30 days of receipt of the Attorneys' voucher.

9. **Caseloads.** If the Municipal Court assigns DiTommaso more than 400 cases per year, he is entitled to additional compensation. For each case accepted above the caseload limit of 400 cases per year, the City will compensate DiTommaso an additional \$120 per case. Likewise, if the Municipal Court assigns Yedinak more than 400 cases per year, he is entitled to additional compensation. For each case accepted above the caseload limit of 400 cases per year, the City will compensate Yedinak an additional \$120 per case.
10. **Service of Process Costs.** In addition to other compensation, the City will pay Attorneys \$500 (\$250 to DiTommaso and \$250 to Yedinak) each year to help Attorneys offset the costs they may incur for service-of-process fees. Payment is due on March 1 each year.
11. **Vouchers.** On a standard voucher form, Attorneys must provide the City with monthly statistics for all cases assigned. The statistics must include: (1) name of client; (2) case number; (3) charge; (4) disposition (plea, bench or jury trial); (5) whether an appeal was filed; and (6) attorney hours spent on case. Attorneys must submit the voucher to the City by the 15th of each month. Attorneys must also submit the voucher to the Office of the Administrator of the Courts by the 15th of each month.
12. **Administrative Costs.** Attorneys affirmatively represent that the compensation provided by the City will allow them to pay for their administrative costs. These costs include, but are not limited to: travel, telephones, law library, electronic research, financial accounting, a case management system, computers, software, office space, office supplies, training, meeting the reporting requirements imposed by the New Standards for Indigent Defense, and other costs incurred in the day-to-day management of this Agreement.
13. **Certification Form.** Attorneys must file a Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1, CrRLJ 3.1, and JuCR 3.1 with the East Wenatchee Municipal Court on a quarterly basis.

- 14. Discovery Provided.** The City will provide to the Attorneys at no cost to the Attorneys or a defendant one copy of all discoverable material concerning each assigned case. The Attorneys agree that the City may provide these materials electronically. Such material will include, when relevant, a copy of the abstract of the defendant's driving record.
- 15. Criminal History Record Information.** As allowed by RCW 10.97.060(5), for each assigned case assigned, the City will provide a defendant's criminal history record information to the Attorneys. The criminal history record may contain non-conviction data. The City and the Attorneys believe that this information will help the City and the Attorneys provide high quality service in the administration of criminal justice. Attorneys agree to limit their use of the criminal history record information for the sole purpose of representing a defendant in an assigned case. Attorneys further agree that they will not disseminate the criminal history record information to any third parties and agree to insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.
- 16. Attorneys Unavailability.** If the Attorneys are unavailable due to illness, vacation, or other events beyond the Attorneys' reasonable control, the Attorneys will supply the City with a list of Attorneys, in the Wenatchee/East Wenatchee area who are willing to serve as appointed counsel until such time as the Attorneys are once again available. It is the Attorneys' responsibility to coordinate with any Attorneys on such list to ensure their availability, especially for twenty-four hour access as provided by paragraph three herein, during the Attorneys' absence or periods of unavailability.
- 17. Municipal Code.** The East Wenatchee Municipal Code is located online at the following URL address: <http://www.codepublishing.com/wa/eastwenatchee>. Also, the City provides links to the East Wenatchee Municipal Code through its website at <http://east-wenatchee.com>. The City will provide the Attorneys with any relevant amendments adopted by the City during the term of this Agreement.

18. No Assignment of Agreement. Except as provided herein, no party may assign the duties in this Agreement to a third party.

19. Attorneys' Conflict. If the representation of a defendant hereunder raises a conflict of interest such that the Attorneys cannot represent a defendant, the Attorney must refer him or her back to the Court for appointment of another attorney, who will be paid by the City.

20. Standards for Public Defense Services. Attorneys must comply with the Standards for Public Defense Services, as adopted by the City Council for the City in Resolution No. 2012-22, a copy of said resolution is attached as Exhibit "A" and is incorporated herein as if fully set forth herein. Before January 10 of each year, the Attorneys must submit an affidavit to the City Treasurer stating that Attorneys are in compliance with such standards.

21. Specific Duties of Attorneys.

21.1. Attorneys must use their best efforts to provide proper legal representation and advice in the best interest of the person at all stages of court proceedings for which he/she is appointed. Attorneys must perform all normal and appropriate duties of legal counsel in such capacity.

21.2. Attorneys must maintain an office and telephone number for the purpose of receiving notice of appointments, for consultations with appointed persons, and for carrying out the duties of Attorneys hereunder, and must keep the Court and City notified of any changes of office or telephone number. The Attorneys must provide the City Police Department with a twenty-four hour telephone number, where defendants can reach the Attorneys or their designee as provided in paragraph three above.

21.3. Attorneys must use their best efforts to make arrangements for prompt consultation with appointed persons and must meet with the appointed person as soon as practicable in order to provide legal representations and to assist the City in efficient court and docket administration.

21.4. Attorneys must complete all plea bargaining and all paperwork needed for trial or court appearances within a time before each case is set for trial or hearing.

21.5. Attorneys must provide an interpreter where required for their office consultations or for witness interviews.

22. Term of This Agreement. The initial term of this Agreement is from 12:01 a.m. on January 1, 2016 to 11:59 p.m. on December 31, 2017. Unless a party gives written notice of intent not to renew at least 60 days before the initial term ends, this Agreement automatically extends until 11:59 p.m. on December 31, 2018.

23. Termination.

23.1. **By the City.** The City may terminate this Agreement without the necessity of substantiating cause by providing Attorneys with 30 days written notice.

23.2. **By Attorneys.** Attorneys may terminate this Agreement if the City fails to perform its obligations as described in this Agreement, and if such failure has not been corrected to the reasonable satisfaction of the Attorneys in a timely manner or the City has not made reasonable efforts to correct such failure, after 30 days written notice of such breach has been provided to the City.

23.3. **Cases.** The Attorneys must complete all cases assigned prior to the date of termination of this Agreement. The Attorneys agree to make reasonable efforts to fulfill this obligation.

24. Expert Witness Fees. The Attorneys may make an ex parte request for expert witness/investigator fees. If the court authorizes the expense, the Attorneys may retain an expert/investigator of their choosing. Attorneys must submit an itemized voucher to the court for reimbursement.

25. **Entire Agreement.** This Agreement contains the entire agreement between the parties and may not be enlarged, modified, or altered except in writing, signed by the parties, and endorsed hereon.

26. **Savings Clause.** Nothing in this Agreement requires the commission of any act contrary to law. If there is a conflict between a provision of this Agreement and a statute, law, public regulation, or ordinance, the latter prevails. If such an event occurs, the affected provision of this Agreement is only limited to the extent necessary to bring it within legal requirements.

27. **Notices.** A notice is effective if personally served on the other party or if mailed by registered or certified mail, return receipt requested, to the following addresses:

Attorney Tony DiTommaso
Law Office of Tony DiTommaso
23 South Wenatchee Avenue, Suite 201
Wenatchee WA 98801

Attorney Nicholas A. Yedinak
Kottkamp & Yedinak, PLLC P.S.
P.O. Box 1667
Wenatchee WA 98807

Nick Gerde, City Treasurer
City of East Wenatchee
271 9th St NE
East Wenatchee WA 98802

28. **Attorney's Fees and Costs.** If a party brings a legal action to enforce this Agreement, the substantially prevailing party is entitled to recover reasonable attorney's fees and other costs incurred in that action.

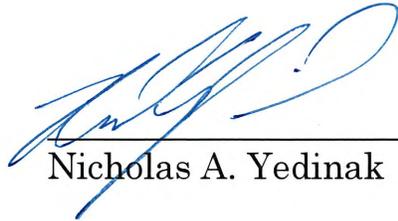
29. **Governing Law.** The laws of the State of Washington govern this Agreement. The venue for any action arising from this Agreement is Douglas County Superior Court.

PUBLIC DEFENDER

PUBLIC DEFENDER



Tony DiTommaso



Nicholas A. Yedinak

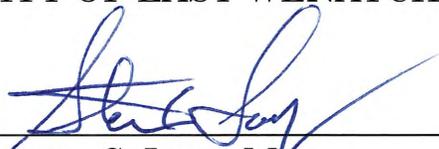
1/23/16

Date

1/26/16

Date

CITY OF EAST WENATCHEE



Steven C. Lacy, Mayor

1/14/16

Date

ATTEST:

Dana Barnard
Dana Barnard, City Clerk

City of East Wenatchee, Washington

Resolution No. 2012-22

A Resolution of the City of East Wenatchee, Washington Adopting Standards for Indigent Defense Services.

1. Authority.

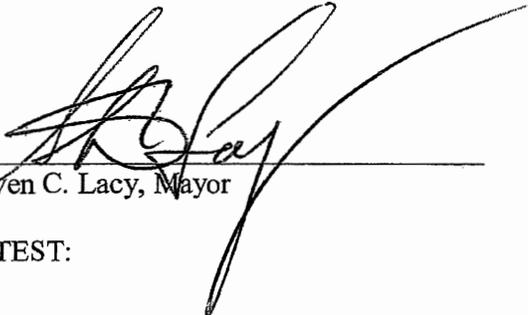
- a. RCW 35A.11.020 and RCW 35A.12.190 authorize the City Council to organize and regulate its internal affairs and to define the powers, functions and duties of its officers and employees.

THE CITY COUNCIL OF THE CITY OF EAST WENATCHEE DO RESOLVE AS FOLLOWS:

- Section 1: Purpose. In 2012, the Washington Supreme Court amended its Standards for Indigent Defense Services. To comply with these new Standards, the City Council wishes to update city policy.
- Section 2: Repeal. The City Council repeals Resolution 2009-07.
- Section 3: Adoption. The City Council adopts the Standards for Indigent Defense Services that are set forth in Exhibit A and the standards set forth in Exhibit B. If any language in Exhibit A conflicts with the language in Exhibit B, the language of Exhibit B controls.
- Section 4: Severability. If a court of competent jurisdiction declares any provision in this resolution to be contrary to law, such declaration shall not affect the validity of the other provisions of this Resolution.
- Section 5: Effective Date. This Resolution becomes effective immediately.

Passed by the City Council of East Wenatchee, at a regular meeting thereof on this 9th
day of October, 2012.

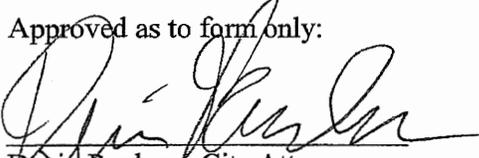
CITY OF EAST WENATCHEE,
WASHINGTON

By 
Steven C. Lacy, Mayor

ATTEST:


Dana Barnard, City Clerk

Approved as to form only:


Devin Poulson, City Attorney

Filed with the City Clerk: 10/3/12
Passed by the City Council: 10/9/12
Effective Date: 10/9/12



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.

Resolution 2012-22
Exhibit A

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 case¹:

- 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

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.

- 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.

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

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. [\[Link\]](#)

Resolution 2012-22
Exhibit A

- 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; ³ 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:

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."

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

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Exhibit A

- 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 STANDARDS FOR
INDIGENT DEFENSE AND CERTIFICATION OF
COMPLIANCE

ORDER

NO. 25700-A- 1008

The Office of Public Defense having recommended amendments to the Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments 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 Standards for Indigent Defense, including the new Preamble, amendments to Standard 3.1, Standard 3.5, and Standard 5.2 will be published in the Washington Reports and become effective on October 1, 2012. The new subsection (e) of the Certification Form will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 7th day of September, 2012.

CLERK

BY RONALD R. CARPENTER

2012 SEP -7 A 10:23

FILED
SUPREME COURT
WASHINGTON

643/59

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*IN THE MATTER OF THE STANDARDS FOR INDIGENT DEFENSE AND CERTIFICATION
OF COMPLIANCE*

Madsen, C. J.

Chamber, J.
Fairhurst, J.

Stepien, J.
Wiggins, J.

Rubin, J.

Conrad, J.

STANDARDS FOR INDIGENT DEFENSE

[New]

Preamble

The Washington Supreme Court adopts the following Standards to address certain basic elements of public defense practice related to the effective assistance of counsel. The Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1/CrRLJ 3.1/JuCR 9.2 references specific "Applicable Standards." The Court adopts additional Standards beyond those required for certification as guidance for public defense attorneys in addressing issues identified in *State v. A.N.J.*, 168 Wash.2d 91 (2010), including the suitability of contracts that public defense attorneys may negotiate and sign. To the extent that certain Standards may refer to or be interpreted as referring to local governments, the Court recognizes the authority of its Rules is limited to attorneys and the courts. Local courts and clerks are encouraged to develop protocols for procedures for receiving and retaining Certifications.

Standard 1. Compensation

[Reserved.]

Standard 2. Duties and Responsibilities of Counsel

[Reserved.]

Standard 3. Caseload Limits and Types of Cases

Standard 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.

Standard 3.1 adopted effective October 1, 2012

Standard 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.

Standard 3.2 adopted effective October 1, 2012

Standard 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.

Exhibit B

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.

Standard 3.3 adopted effective October 1, 2012

Standard 3.4. Caseload Limits. Effective October 1, 2013.

Standard 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. Attorneys may not engage in a case weighting system, unless pursuant to written policies and procedures that have been adopted and published by the local government entity responsible for employing, contracting with, or appointing them.~~ 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;
- 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 upward. 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.

Standard 3.5 adopted effective October 1, 2012

Standard 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 Upward. 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 upward 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, representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Noncomplex 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 noncriminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

Standard 3.6 adopted effective October 1, 2012

Related Standards

ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION
Defense Function std. 4-1.2 (3d ed. 1993)

ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES std. 5-4.3 (3d ed. 1992)

AM. BAR ASS'N, GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE
COUNSEL IN DEATH PENALTY CASES (rev. ed. 2003)

ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-441 (2006) (*Ethical
Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive
Caseloads Interfere With Competent and Diligent Representation*)

Am. Council of Chief Defenders, *Statement on Caseloads and Workloads* (Aug. 24, 2007)

ABA House of Delegates, *Eight Guidelines of Public Defense Related to Excessive
Caseloads* (Aug. 2009)

TASK FORCE ON COURTS, NAT'L ADVISORY COMM'N ON CRIMINAL STANDARDS & GOALS,
COURTS std. 13.12 (1973)

MODEL CODE OF PROF'L RESPONSIBILITY DR 6-101.

ABA House of Delegates, *The Ten Principles of a Public Defense Delivery System* (Feb. 2002)

ABA House of Delegates, *Standards of Practice for Lawyers Who Represent Children in
Abuse and Neglect Cases* (Feb. 1996)

Nat'l Legal Aid & Defender Ass'n, Am. Council of Chief Defenders, Ethical Opinion 03-01
(2003).

Nat'l Legal Aid & Defender Ass'n, *Standards for Defender Services* std. IV-1 (1976)

Nat'l Legal Aid & Defender Ass'n, *Model Contract for Public Defense Services* (2000)

Nat'l Ass'n of Counsel for Children, *NACC Recommendations for Representation of
Children in Abuse and Neglect Cases* (2001)

Seattle Ordinance 121501 (June 14, 2004)

Indigent Defense Servs. Task Force, Seattle-King County Bar Ass'n, *Guidelines for
Accreditation of Defender Agencies* Guideline 1 (1982)

Wash. State Office of Pub. Defense, *Parents Representation Program Standards of
Representation* (2009)

BUREAU OF JUDICIAL ASSISTANCE, U.S. DEP'T OF JUSTICE, INDIGENT DEFENSE SERIES NO. 4,
KEEPING DEFENDER WORKLOADS MANAGEABLE (2001) (NCJ 185632)

Standard 4. Responsibility of Expert Witnesses

[Reserved.]

Standard 5. Administrative Costs

Standard 5.1. [Reserved.]

Standard 5.2.

A. Contracts for public defense services ~~shall~~ should 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.

Standard 5.2 adopted effective October 1, 2012

Standard 6. Investigators

Standard 6.1. Public defense attorneys shall use investigation services as appropriate.

Standard 6.1 adopted effective October 1, 2012

Standards 7-12

[Reserved.]

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 13 adopted effective October 1, 2012.

Standard 14. Qualifications of Attorneys

Standard 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

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.

Standard 14.1 adopted effective October 1, 2012:

Standard 14.2. Attorneys' qualifications according to severity or type of case¹:

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 2.²

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.

²

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 (and) 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.

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Exhibit B

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. 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. Has 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.

Exhibit B

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's experience as a felony defense attorney or one year's 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 case should meet the minimum requirements in Section 1 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.

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.

Standard 14.2 adopted effective October 1, 2012

Standard 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 a RALJ appeal.

Standard 14.3 adopted effective October 1, 2012

Standard 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.

Standard 14.4 adopted effective October 1, 2012

Standards 15-18

[Reserved.]

CERTIFICATION OF COMPLIANCE

[New]

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

_____ Court of Washington for _____ State of Washington _____, Plaintiff vs. _____ Defendant	No. CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CrR 3.1/CrRLJ 3.1/JuCR 9.2
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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 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 September 1, 2013: 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. **Specific Qualifications:** I meet the specific qualifications in Standard 14.2, Sections B-K, [Effective September 1, 2013.]

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Exhibit B

Defendant's Lawyer, WSBA No.

Date

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Exhibit B

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;³ and
- ii. Have at least:
 - a. four years’ criminal trial experience; and
 - b. one year’s 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.

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; or 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.

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.”

Exhibit B

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. Has 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