ORDINANCE NO. 04-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON RELATING TO STANDARDS FOR THE DELIVERY OF PUBLIC DEFENSE; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is a requirement of the Washington State Constitution and Chapter 10.101 RCW, and a public purpose, that each person charged with a crime punishable by incarceration be provided with effective legal representation in order to ensure equal justice under the law without regard to his/her ability to pay; and

WHEREAS, effective legal representation should be provided consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches; and

WHEREAS, Chapter 10.101 RCW requires the City of Covington ("City") to adopt standards for the delivery of public defense services; and

WHEREAS, the Washington State Bar Association (WSBA) has promulgated indigent defense standards, last revised in 2011, which state the objective of the promulgated standards as:

> The objective of these guidelines is to alert the attorney to the course of action that may be necessary, advisable, or appropriate, and thereby assist the attorney in deciding upon the particular actions that must be taken in a case to assure that the client receives the best representation possible;

WHEREAS, the Washington Supreme Court by Order No. 25700-A-1004, as amended, has adopted new standards for indigent defense and a certificate of compliance; and

WHEREAS, such standards by court order, with the exception of Standard 3.4, became effective October 1, 2012; and

WHEREAS, new Standard 3.4 relating to case load limits and methodology became effective on January 1, 2015;

WHEREAS, it is the intention of the City, consistent with Chapter 10.101 RCW, Washington Supreme Court Order no 25700-A-1004, and other applicable law, to make public defense services available in an efficient manner that provides effective representation at reasonable cost to the City;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption of Public Defense Standards. To the extent appropriate at the municipal court level, the Washington State Bar Association Standards for Indigent Defense Services, as currently approved on June 3, 2011 and hereafter amended, attached as Exhibit A hereto and fully incorporated by this reference, shall constitute standards for the delivery of public defense services as that term is used in RCW 10.101.030 until such time as the city council may by ordinance adjust those standards.

Section 2. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance or the validity of its application to other persons or circumstances.

Section 3. Corrections by City Clerk. Upon approval of the City Attorney, the City Clerk and/or the codifiers of this ordinance are authorized to make necessary technical corrections to this ordinance, including, without limitation, the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or section/subsection numbering.

Section 4. Effective Date. This ordinance shall be in full force and effect five (5) days after its passage and legal publication. A summary of this ordinance, consisting of the ordinance title, may be published in lieu of publishing the ordinance in its entirety.

PASSED by the City Council of the City of Covington, Washington at its regular meeting on the 26th of January 2016, and signed in authentication of its passage.

Mayor Jeff Wagner

PUBLISHED: January 29, 2016
EFFECTIVE: February 3, 2016

ATTESTED:

Sharon Scott, City Clerk

APPROVED AS TO FORM ONLY:

Sara Springer, City Attorney

ORDINANCE NO. 04-2016
EXHIBIT A

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 case~~s~~ at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 *supra*; or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. (*The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.*)

Related Standards

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

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

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

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

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

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

American Bar Association *Disciplinary Rule 6-101.*

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

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

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

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

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

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

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

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

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

STANDARD FOUR: Responsibility for Expert Witnesses

Standard:

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

Related Standards:

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

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

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

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

STANDARD FIVE: Administrative Costs

Standard:

1. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.

2. Public defense attorneys shall have an office that accommodates confidential meetings with clients and receipt of mail, and adequate telephone services to ensure prompt response to client contact.

Related Standards:

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

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

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

STANDARD SIX: Investigators

Standard:

1. Public defense attorneys shall use investigation services as appropriate.

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

Related Standards:

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

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

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

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

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

STANDARD SEVEN: Support Services

Standard:

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

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

Related Standards:

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

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

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

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

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

STANDARD EIGHT: Reports of Attorney Activity

Standard:

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

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

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

Related Standards:

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

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

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

STANDARD NINE: Training

Standard:

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

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

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

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

Related Standards:

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

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

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

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

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

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

STANDARD TEN: Supervision

Standard:

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

Related Standards:

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

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

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

STANDARD ELEVEN: Monitoring and Evaluation of Attorneys

Standard:

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

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

Related Standards:

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

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

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

STANDARD TWELVE: Substitution of Counsel

Standard:

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

Related Standards:

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

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

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

STANDARD THIRTEEN: Limitations on Private Practice

Standard:

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

Related Standards:

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

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

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

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

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

STANDARD FOURTEEN: Qualifications of Attorneys

Standard:

1. **In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:**
   A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and
   B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
   C. Be familiar with the Washington Rules of Professional Conduct; and
   D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
   E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
   F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
   G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

2. **Trial attorneys' qualifications according to severity or type of case[1]:**
   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

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[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 be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

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

iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Sex Offense Cases. Each attorney representing a client in an adult sex offense case shall meet the following requirements:

i. The minimum requirements set forth in Section 1 and Section 2(C); and

ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

i. The minimum requirements set forth in Section 1, and

ii. Either:

a. has served one year as a prosecutor; or

b. has served one year as a public defender; or one year in a private criminal practice; and

iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and

iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. Persistent Offender (Life Without Possibility of Release) Representation. Each attorney acting as lead counsel in a "two-strikes" or "three strikes" case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

i. The minimum requirements set forth in Section 1; [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:

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[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

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.