

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF  
STANDARDS 3.2, 5.2, 6.1, 13, AND 14 OF THE  
WASHINGTON STATE BAR ASSOCIATION 2011  
STANDARDS FOR INDIGENT DEFENSE  
SERVICES; AND STANDARDS 3.3 AND 3.4 OF  
THE WASHINGTON STATE BAR ASSOCIATION  
2011 STANDARDS FOR INDIGENT DEFENSE  
SERVICES

## ORDER

NO. 25700-A- 983

The Washington State Bar Association having recommended the adoption of the Standards 3.2, 5.2, 6.1, 13, and 14 of the Washington State Bar Association 2011 Standards for Indigent Defense Services with a January 1, 2012 effective date; Standards 3.3 and 3.4 of the Washington State Bar Association 2011 Standards for Indigent Defense Services with a January 1, 2013, effective date, and the Court having approved the Standards for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed standards as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites expeditiously.

CLERK

BY RONALD L. CARPENTER

11 JUL 13 PM 2:10

FILED  
OFFICE OF THE  
CLERK OF THE  
SUPREME COURT  
WASHINGTON

6/17/12

Page Two

*Standards 3.2, 5.2, 6.1, 13, and 14 of the Washington State Bar Association 2011 Standards for Indigent Defense Services; and approved Standards 3.3 and 3.4 of the Washington State Bar Association 2011 Standards for Indigent Defense Services*

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than October 31, 2011. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Camilla.Faulk@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 13<sup>th</sup> day of July, 2011.

For the Court

  
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CHIEF JUSTICE

## **GR 9 COVER SHEET**

### **Suggested Standards Submitted to Court for Approval Pursuant to CrR 3.1, CrRLJ 3.1, and JuCR 9.2**

**Purpose:** On July 8, 2010, the Court adopted amendments to CrR 3.1, CrRLJ 3.1, and JuCR 9.2. The amendments require appointed counsel to certify compliance with Standards for Indigent Defense Services to be approved by the Supreme Court, and are to become effective January 1, 2012. The WSBA Council for Public Defense considered the views of numerous stakeholders and interested parties while developing Standards for certification regarding caseloads, administrative costs, investigators, limitations on private practice, and qualifications of attorneys, with a proposed effective date of January 1, 2012. Standards for caseload limits were also developed, with a proposed effective date of January 1, 2013.

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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

Standard 3.2 – Caseload Limits and Types of Cases: 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 5.2 – Administrative Costs: 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.

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

Standard 13 – Limitations on Private Practice: Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

### Standard 14 -- 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.

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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

A. Death Penalty Representation. Each attorney acting as lead counsel in a death penalty case or an aggravated homicide case in which the decision to seek the death penalty has not yet been made shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. At least five years criminal trial experience; and
- iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
- iv. Have served as lead or co-counsel in at least one jury trial in which the death penalty was sought; and
- v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
- vi. Have completed at least one death penalty defense seminar within the previous two years; and
- vii. Meet the requirements of SPRC 2.<sup>2</sup>

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

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

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

*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*

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator.

Psychiatrists, psychologists and other experts and support personnel should be added as needed.

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

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

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

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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
- 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



## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

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

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

- i. The minimum requirements set forth in Section 1;<sup>3</sup> and

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

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

ii. Have at least:

- a. four years criminal trial experience; and
- b. one year experience as a felony defense attorney; and
- c. experience as lead counsel in at least one Class A felony trial; and
- d. experience as counsel in cases involving each of the following:
  1. Mental health issues; and
  2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
  3. Expert witnesses; and
  4. One year of appellate experience or demonstrated legal writing ability.

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

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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.

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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.

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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.

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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:

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

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.



## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

The following Standards for Indigent Defense are adopted pursuant to CrR 3.1, CrRLJ 3.1, and JuCR 9.2 and are effective January 1, 2013:

### Standard 3.3 – Caseload Limits and Types of Cases: 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.

Standard 3.4 – Caseload Limits and Types of Cases: Caseload Limits: The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

## SUGGESTED STANDARDS FOR INDIGENT DEFENSE

150 Felonies per attorney per year; or

[Misdemeanor cases – reserved]

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2; or

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