

WSR 23-21-022
RULES OF COURT
STATE SUPREME COURT
[October 3, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1535
THE CERTIFICATE OF APPOINTED)
COUNSEL OF COMPLIANCE WITH)
STANDARDS FORM [REQUIRED BY)
CrR 3.1; CrRLJ 3.1; JuCR 9.2; AND)
MPR 2.1])

The Washington State Bar Association, having recommended the adoption of the suggested amendments to the Certification of Appointed Counsel of Compliance with Standards Form [Required by CrR 3.1; CrRLJ 3.1; JuCR 9.2; and MPR 2.1], and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9 (j) (1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 3rd day of October, 2023.

Johnson, J.
Madsen, J.
Owens, J.
Stephens, J.
Gonzalez, C.J.
Gordon McCloud, J.
Yu, J.
Montoya-Lewis, J.
Whitener, J.

GR 9 COVER SHEET

Suggested Amendments to

SUPERIOR COURT CRIMINAL RULES; CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION; JUVENILE COURT RULES; MENTAL PROCEEDINGS RULES
REVISED CrR 3.1/CrRLJ 3.1/JUCR 9.2/MPR 2.1

A. Name of Proponent:

Washington State Bar Association

B. Spokespersons:

Dan Clark, President, Washington State Bar Association, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 (telephone (509) 969-4731)

Jason Schwarz, Chair, Council on Public Defense, Washington State Bar Association, Seattle, WA 98101-2539 (telephone (425) 388-3032)

Bonnie Sterken, Equity and Justice Lead, Washington State Bar Association, Seattle, WA 98101-2539 (telephone (206) 727-8293)

C. Purpose:

The proponent recommends suggested revisions to the Certification of Appointed Counsel of Compliance with Standards required by CrR 3.1/CrRLJ 3.1/JUCR 9.2/MPR 2.1. The existing form has been interpreted inconsistently by practitioners who are not always clear on what they are to report. The proposed revised form simplifies and clarifies what lawyers are to report.

1. History

The issue came to the WSBA Council on Public Defense's attention when the Washington Office of Public Defense expressed concerns about inconsistent compliance with the certification rule and because of individual examples of lawyers who failed to file or filed incomplete certification forms.

In areas of the state with rural and small jurisdictions, defense attorneys often engage in both public defense and privately retained work. Moreover, their public defense work is often comprised of assigned cases from multiple jurisdictions. Such "stacking" of cases can (and does) result in attorneys exceeding caseload limits. Certification forms are received and reviewed on an individual jurisdiction basis. The current form makes it very ambiguous as to what an attorney's full caseload looks like. As a result, there are attorneys who exceed caseload standards, but certification forms don't reflect that. Less time per case results in less time with client communication investigation, case preparation, and litigation.

In Washington's decentralized public defense system, the CPD seeks to ensure certain minimal standards for public defense in all jurisdictions. It is unequitable for people to receive disparate representation based on geographic jurisdiction. Higher caseloads not only result in less attorney time and focus per case, but they also create a danger that defense attorneys will triage cases, prioritizing their time and effort for some clients over others. This triage approach coupled with unconscious bias, can result in disparate representation based on clients' race or ethnicity. (Reference: https://www.yalelawjournal.org/pdf/1199_pzeey4t1.pdf)

2. Suggested Amendments

The following are summaries and explanations of each suggested amendment:

- Changes were made to add sections 1, 2, 4, and the second half of 3 as part of the certification.
 - o These changes were made to provide transparency for public defense administrators about the caseloads of their contracted public defense lawyers in other jurisdictions. Many lawyers who take public defense contract practice in multiple jurisdictions. The prior version of the Certification form made no mention of the accounting for workload generated by other jurisdictions. This form adds sections to provide a more detailed accounting of the work across jurisdictions. It allows public defense administrator to assure that they are not providing more work than is allowed by the standards.
 - o These changes will help public defense administrators assure their jurisdiction is providing effective assistance of counsel guaranteed to the accused by the 6th Amendment to the US Constitution.
- Changes were made to Section #6 "Qualifications" by merging two former sections into one section with two sentences.
 - o This is simply a matter of clarification.

D. Hearing:

A hearing is not requested.

E. Expedited Consideration:

Expedited consideration is not requested.

F. Supporting Material:

- Suggested revisions to the Certification of Appointed Counsel of Compliance with Standards required by CrR 3.1/CrRLJ 3.1/JUCR 9.2/MPR 2.1

Standards 15-18
[Reserved.]

CERTIFICATION OF COMPLIANCE

For criminal and juvenile offender cases, and civil commitment proceedings under Chapter 71.05 RCW, 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:

<input type="checkbox"/> SUPERIOR COURT <input type="checkbox"/> JUVENILE DEPARTMENT <input type="checkbox"/> DISTRICT COURT <input type="checkbox"/> MUNICIPAL COURT FOR <input type="checkbox"/> CITY OF <input type="checkbox"/> COUNTY OF _____, STATE OF WASHINGTON	<input type="checkbox"/> No.: _____ <input type="checkbox"/> Administrative Filing
CERTIFICATION BY: [NAME], [WSBA#] FOR THE: [1ST, 2ND, 3RD, 4TH] CALENDAR QUARTER OF [YEAR]	Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1/CrRLJ 3.1/JuCR 9.2/MPR 2.1

The undersigned attorney hereby certifies:

~~1. Approximately % of my total practice time is devoted to indigent defense cases.~~

1. I am familiar with the applicable Standards for Indigent Defense adopted by the Supreme Court for which apply to attorneys appointed to represent indigent persons and that clients.:

2. I file certification forms in each court in which I provide indigent defense representation.

3. Approximately % of my total practice time is devoted to indigent defense cases.

Approximately % of my total practice time is devoted to indigent defense cases in this court.

4. I am appointed in other courts to provide indigent defense representation. My practice time in each is approximately as follows:

Not Applicable

Court: % of total practice:
Court: % of total practice:
Court: % of total practice:

5. Caseload: I limit the number of cases and mix of case types to the caseload limits required by Standards 3.2, 3.3 and 3.4. My caseload is prorated to the percentage of my practice devoted to indigent defense.

6. Qualifications: I meet the minimum basic professional qualifications in Standard 14.1. I am familiar with the specific case qualifications in Standard 14.2 and accept appointment as lead counsel only when I meet the qualifications for that case.

7. Office: I have access to an office that accommodates confidential meetings, a postal address, and adequate telephone and communication services as required by Standard 5.2.

8. Investigators: I have investigators available to me and use investigative services as appropriate, as required by Standard 6.1.

- a. ~~Basic Qualifications: I meet the minimum basic professional qualifications in Standard 14.1.~~
- b. ~~Office: I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.~~
- c. ~~Investigators: I have investigators available to me and will use investigative services as appropriate, in compliance with Standard 6.1.~~
- d. ~~Caseload: I will comply with Standard 3.2 during representation of the defendant in my cases. [Effective October 1, 2013 for felony and juvenile offender caseloads; effective January 1, 2015 for misdemeanor caseloads: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]~~
- e. ~~Case Specific Qualifications: I am familiar with the specific case qualifications in Standard 14.2, Sections B-K and will not accept appointment in a case as lead counsel unless I meet the qualifications for that case. [Effective October 1, 2013]~~

Signature, WSBA#

Date

CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CRR 3.1/CRRLJ 3.1/JUCR

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