

WSR 25-02-013
RULES OF COURT
STATE SUPREME COURT
[November 7, 2024]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO CrR) NO. 25700-A-1612
3.1/CrRLJ 3.1/JuCR 9.2 STANDARDS)
FOR INDIGENT DEFENSE RE:)
FAMILY DEFENSE CASES)

The Washington State Bar Association (WSBA) and the WSBA Council on Public Defense, having recommended the suggested amendments to the Standards for Indigent Defense under CrR 3.1/CrRLJ 3.1/JuCR 9.2 regarding family defense cases, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2025.

(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 April 30, 2025. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 7th day of November, 2024.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments
STANDARDS FOR INDIGENT DEFENSE
Rules CrR 3.1/CrRLJ 3.1/JuCR 9.2 Stds

Submitted by the Washington State Bar Association

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C. Purpose:

The purpose of the suggested amendments to the Standards for Indigent Defense is to update standards applicable to family defense practice to ensure family defense attorneys have the supervision and training, caseloads, and access to social work professionals necessary to allow them to provide adequate, ethical defense to their clients.

In October 2023, the Washington Supreme Court requested that the Washington State Bar Association's Council on Public Defense (CPD) review and update caseload standards in the Court's Standards for Indigent Defense. In March 2024, the CPD recommended, and the WSBA Board of Governors approved, comprehensive amendments to the Standards for Indigent Defense, including revised caseload standards. At that time, CPD and the WSBA Board reserved the matter of standards pertaining to family defense cases due to differences between family defense practice and felony and misdemeanor practice and because the resources available to develop felony and misdemeanor standards did not address family defense cases. The WSBA Board and CPD concluded the standards applicable to family defense should be reviewed by individuals with expertise in that practice area and CPD convened a committee of family defense practitioners to update those standards.

In developing the suggested amendments, the committee conducted extensive research on appropriate family defense practice standards. With respect to caseload standards, the committee worked with a national public defense workload expert to conduct a study of Washington family defense attorneys to determine the amount of time necessary to provide constitutional and ethical representation in family defense cases. Based on this study and research, the committee recommended revisions to the WSBA Standards for Indigent Defense Services and the Court Indigent Defense standards focused on three primary areas: social work staff requirements, training and qualification standards, and caseloads. The WSBA Board of Governors adopted the recommended amendments to the WSBA standards and approved the recommended amendments to the Court standards on September 7, 2024.

First, the suggested amendments would require the agencies responsible for administering family defense funding to provide one social worker for every one full-time attorney representing parents in family defense proceedings by July 3, 2028. This recommendation is based in part on a large study of family defense cases that found that an interdisciplinary approach to parent representation—one in which parents are represented by a team that includes social workers or non-lawyer parent advocates—decreased the time children spent in foster care and promoted timely "permanency" for children.¹ In addition, family defense clients often require significant support to assist them in making the changes to their lives that will ultimately resolve their cases. This standard was developed in consultation with the Office of Public Defense (OPD) leadership responsible for administering existing defense social work supports.

¹ Gerber, Lucas A., Yuk C. Pang, Timothy Ross, Martin Guggenheim, Peter J. Pecora, and Joel Miller. "Effects of an interdisciplinary approach to parental representation in child welfare." *Children and Youth Services Review* 102 (2019): 42-55.

Second, the current standards have no meaningful experience or supervision requirements for family defense representation. Therefore, the suggested amendments provide for proficiency determinations and a system for consultation with more experienced practitioners for attorneys who lack the necessary practice skills. These revisions reflect new supervision and training systems being developed by OPD and the Office of Civil Legal Aid (OCLA).

Lastly, the suggested amendments create a caseload maximum for family defense attorneys of no more than 35 clients with no more than 40 total open and active cases at any given time. This standard was developed using a recent workload study of Oregon family defense practitioners. Oregon's family defense system is similar to Washington's and served as a starting point for revising the Washington standard. The family defense subcommittee then worked with a public defense workload expert to conduct a condensed workload study of Washington family defense practitioners to adapt the Oregon findings to Washington. The suggested amendments are drawn from the results of that study.

D. Hearing: A hearing is not requested. The Court, however, has scheduled a public hearing for September 25, 2024, to consider the previously proposed amendments to the Standards for Indigent Defense. Proponents do not oppose consolidating the suggested amendments relating to family defense with the hearing on the comprehensive amendments to the Standards.

E. Expedited Consideration: Expedited consideration is requested.

F. Supporting Material:

1. Cover memo to the WSBA Board of Governors dated August 12, 2024

Suggested Amendments to CrR 3.1/CrRLJ 3.1/JuCR 9.2

[The suggested amendments below are in addition to and presume adoption of the proposed amendments to the Standards for Indigent Defense submitted on March 21, 2024 and published for comment in Order 25700-A-1568. The below suggested amendments address the Standards as applied to family defense representation. The previously proposed amendments are not duplicated here.]

STANDARDS FOR INDIGENT DEFENSE

Preamble

[Unchanged]

Definitions

1. Family Defense - Family defense is the practice of representing all people statutorily and constitutionally entitled to legal representation in cases under RCW 13.34, 13.36, and 13.38, et seq.

2. Family Defense Social Worker or Family Defense Social Service Worker - A family defense professional with a degree in Social Work (or allied field) who provides professional services to assist the attorney and to help meet the basic and complex needs of the client. At the discretion of the agency or firm, individuals without a degree in Social Work (or other field), but who can demonstrate lived or professional experience in the dependency system may serve the same role with the title of "Family Defense Social Service Worker."

Standards 1. - 2.

[Unchanged]

Standard 3. Caseload Limits and Types of Cases

Standard 3.1 - 3.2. [Unchanged]

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.

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 the case types in the attorney's caseload, but it is not a factor in adjusting the applicable numerical caseload limits except as follows: attorneys with less than six months of full time criminal defense experience as an attorney should not be assigned more than two-thirds of the applicable maximum numerical caseload limit. This provision applies whether or not the public defense system uses case weighting.

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 a new court filing or action that of a document with the court namesing a person who is eligible for appointment of a public defense attorney; for example, an adult criminal charging instrument; a juvenile court offender or BECCA petition; a dependency, Title 13 guardianship, or termination of parental rights petition; a civil commitment petition; or an appeal. 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 3.4. Caseload Limits. The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 felonies per attorney per year; or

300 misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this standard, 400 cases per year; or

250 juvenile offender cases per attorney per year; or

Family Defense. Family defense attorneys shall not represent more than 35 family defense clients or carry more than 40 open and active family defense cases at any given time. State agencies responsible for administering family defense representation may adopt case weighting standards not inconsistent with these standards. A supervising attorney assigned as co-counsel may count that client or case towards their total under this rule. 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.)

Full-time rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full-time attorneys.

In public defense systems in which attorneys are assigned to represent groups of clients at first appearance or arraignment calendars without an expectation of further or continuing representation for cases that are not resolved at the time (except by dismissal) in addition to individual case assignments, the attorneys' maximum caseloads should be reduced proportionally recognizing that preparing for and appearing at such calendars requires additional attorney time. This provision applies both to systems that employ case weighting and those that do not.

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. This provision applies both to systems that employ case weighting and those that do not.

In public defense systems in which attorneys are assigned to represent groups of clients in routine review hearing calendars in which there is no potential for the imposition of sanctions, the attorneys' maximum caseloads should be reduced proportionally by the amount of time they spend preparing for and appearing at such calendars. This provision applies whether or not the public defense system uses case weighting.

Standard 3.5 - 3.6. [Unchanged]

Standard 3.7. Implementation of Standards. Beginning July 2, 2025, family defense attorneys shall not represent more than 45 family defense clients or carry more than 60 open and active cases at any given time. Beginning July 2, 2026, family defense attorneys shall not represent more than 35 family defense clients or carry more than 40 open and active cases at any given time.

Related Standards

[Unchanged]

Standard 4. Responsibility of Expert Witnesses

~~[RESERVED]~~

For public defense agencies responsible for administering the funding for parent representation, by July 3, 2028, a minimum of one full-time family defense social worker or family defense social service worker shall be provided for every one full-time attorney representing parents in family defense proceedings, on a pro rata basis according to the size of the contract. Public defense agencies responsible for administering the funding for parent's defense shall make meaningful progress towards the ratio of one full-time family defense social worker or family defense social service worker for every one full-time parent's defense attorney prior to July 3, 2028. Public defense agencies responsible for administering the funding for child and youth representation shall ensure that adequate social work support services are made available to meet the case and support needs of children and youth in family defense cases.

Standards 5 - 7.

[Unchanged]

~~Standards 7-12~~

~~[RESERVED]~~

Standard 8. Reports of Attorney Activity

Jurisdictions and family defense contracting agencies shall require all public defense attorneys to use a case-reporting and management information system that includes the number and types of assigned cases, attorney hours and case dispositions. Data from these systems should be routinely reported to public defense administrators in a manner in which confidential, secret, and otherwise non-public information are not disclosed. Consistent with Standard Eleven, public defense administrators should review these reports on a regular basis to monitor compliance with these Standards.

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.

Standard 9.

[Unchanged]

Standard 10: Supervision

Supervision for Family Defense Representation.

Supervising Attorney Standard: Where a contracted provider is contracted for more than one full-time equivalent (FTE), they shall designate one full-time supervising attorney for every ten full-time family defense attorneys. A parttime supervising attorney should limit their caseload on a pro-rata basis. Supervisors may act as co-counsel in a limited number of cases to provide mentoring and training experience for their supervisees. To be a supervising attorney for family defense cases, the attorney must meet the criteria as set forth in Standard 14.C.4.a. Where a contracted provider is contracted for one FTE or less, the Office of Public Defense or the Office of Civil Legal Aid shall make available programs to support co-counsel opportunities, mentoring programs, or training experiences, as set forth in Standard 14.

Standards 11 - 13.

[Unchanged]

Standard 14. Qualifications of Attorneys

Standard 14.1. [Unchanged]

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

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.

A. - K. [Unchanged]

L. Dependency **Family Defense Cases.**

i. Youth - Each attorney lead counsel representing a client children and youth in a dependency family defense matter shall meet the following requirements:

1. Meet the minimum requirements as outlined in Section 1; and

2. Abide, at minimum, by the Representation of Children and Youth in Dependency Cases Practice, Caseload and Training Standards, (Rev. Sept. 2022), established in accordance with Section 9, Chapter 210, Laws of 2021 and adopted by the Washington State Supreme Court Commission on Children in Foster Care;

ii. Parents and Respondents in Family Defense Cases - Each counsel representing parents in a family defense matter shall meet the following requirements:

1. Meet the minimum requirements as outlined in Section 1; and

2. Be familiar with the American Bar Association Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases and the Family Justice Initiative Attributes.

iii. All Family Defense Attorneys:

1. Must complete an orientation training on dependency, guardianship, and termination law. Where a contracted provider has an identified supervising attorney, the supervising attorney may provide this orientation. Where a contracted provider does not have an identified supervising attorney, this orientation shall be provided by the contracting agency.

2. Must have proficiency. Where a contracted provider does not have a supervising attorney, the contracting agency must perform an assessment of proficiency and the need for any further orientation or consultation before the contracted attorney can conduct any fact-finding or evidentiary hearing on their own. To be assessed as proficient and able to effectively fulfill the duties of representing families in dependency courts, the contracting agency shall consider, at a minimum, the following:

a. The number of years of experience doing complex litigation.

b. The number of years of dependency experience.

c. Whether the attorney has experience using experts in dependency or termination proceedings.

d. Education, certification, or other demonstrated proficiency in child welfare.

e. Whether they have previously acted as lead counsel in any of the following proceedings:

1. Shelter Care

2. Dependency Fact Finding

3. Title 13 Guardianship or

4. Termination Trial.

For attorneys who do not have a supervising attorney and who have been assessed by a contracting agency as lacking proficiency to handle a fact-finding or other evidentiary hearing on their own, the Office of Civil Legal Aid and the Office of Public Defense shall provide a consultation program for that attorney that:

- a. Is consistent with RPCs regarding confidentiality, including but not limited to RPC 1.6
- b. Is designed to assist attorneys new to family defense in dependency, guardianship and termination cases, and
- c. Will allow consultants to provide technical assistance and additional representation to parents or children assigned to the attorney.

~~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. - P. [Unchanged]

Standard 14.3 - 14.4. [Unchanged]

Standards 15-18

[Unchanged]

CERTIFICATION OF COMPLIANCE

[Unchanged]