

WSR 21-04-090  
 RULES OF COURT  
 STATE SUPREME COURT  
 [December 2, 2020]

IN THE MATTER OF THE	)	ORDER
SUGGESTED AMENDMENTS TO	)	NO. 25700-A-1331
COUNCIL ON PUBLIC DEFENSE'S	)	
INDIGENT DEFENSE APPELLATE	)	
PERFORMANCE GUIDELINES AND	)	
PROPOSED AMENDMENTS TO CrR	)	
3.1 Stds, CrRLJ 3.1 Stds, AND JuCR 9.2	)	
Stds	)	

The Washington State Bar Association Board of Governors, having recommended the suggested amendments to Council on Public Defense's Indigent Defense Appellate Performance Guidelines and Proposed Amendments to CrR 3.1 Stds, CrRLJ 3.1 Stds, and JuCR 9.2 Stds, 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 2021.

(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, 2021. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or [supremecourts.wa.gov](http://supremecourts.wa.gov). Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of December, 2020.

For the Court

Stephens, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

**Suggested Amendment**

Adoption of the *Washington State Guidelines for Appointed Counsel in Indigent Appeals* and amendment to the Standards Certification of Compliance for CrR 3.1, CrRLJ 3.1 and JuCR 9.2  
 Submitted by the Board of Governors of the Washington State Bar Association

**A. Name of Proponent:**

Washington State Bar Association

**B. Spokespersons:**

Kyle Scuichetti, President, Washington State Bar Association, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 (telephone 360-332-7000)

Travis Stearns, Chair, Council on Public Defense, Washington State Bar Association, Seattle, WA 98101-2539 (telephone 206-587-2711)

Diana Singleton, Access to Justice Manager, Washington State Bar Association, 1325 Fourth Avenue, Suite 600, Seattle, WA 98101-2539 (telephone 206-727-8205)

**C. Purpose:**

The *Standards for Indigent Defense* adopted by the Washington Supreme Court set a caseload limit for appointed counsel representing clients in criminal cases, including those representing persons in their appeals. The *Standards for Indigent Defense* also require appointed counsel in criminal cases to be familiar with the *Performance Guidelines for Criminal Defense Representation* and the *Performance Guidelines for Juvenile Defense Representation* approved by the Washington State Bar Association.

Unlike trial lawyers, before the creation of the *Washington State Guidelines for Appointed Counsel in Indigent Appeals*, no uniform guidance for appellate attorneys existed. These guidelines were created to provide guidance to attorneys who handle appeals for cases where there is a constitutional right to appellate counsel.

These guidelines were originally drafted by an experienced group of appellate attorneys, including the Federal Public Defender, two Washington Appellate Project lawyers, two indigent defense attorneys who worked outside an office structure, and a specialist in Personal Restraint Petitions. The Washington State Office of Public Defense assisted in drafting the guidelines. The drafters of the guidelines modeled them after guidelines adopted in other states and by national organizations, including the American Bar Association and the National Legal Aid and Defender Association.

After the guidelines were drafted, they were sent out to every attorney who represents persons in indigent defense cases. After their feedback was incorporated into the guidelines, the Washington State Office of Public Defense incorporated compliance with them into its contracts. With some minor changes, the guidelines have been used by the Office of Public Defense for several years.

The guidelines were proposed for adoption by the Supreme Court this year. With some amendments, they were approved by a super majority of the Council on Public Defense. They were then sent to the Board of Governors, where it was recommended that the guidelines be sent to the Supreme Court to be added to the *Standards for Indigent Defense*.

The Council on Public Defense recommends adoption of the guidelines and that they be incorporated into the *Standards for Indigent Defense*. The appellate guidelines fill a gap not otherwise addressed in the current guidelines the Supreme Court has. The appellate guidelines also have broad stakeholder support. Their adoption will continue to improve the quality of indigent appellate defense.

**D. Hearing:**

A hearing is not recommended.

**E. Expedited Consideration:**

Expedited consideration is not requested.

**F. Supporting Material:**

Washington State Guidelines for Appointed Counsel in Indigent Appeals.

Proposed redlined amendments to CrRLJ 3.1, CrR 3.1, and JuCR 9.2.

**CrR 3.1**

**STANDARDS FOR INDIGENT DEFENSE**

**Preamble**

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

[Adopted effective October 1, 2012.]

**Standard 1. Compensation**

[Reserved.]

**Standard 2. Duties and Responsibilities of Counsel**

[Reserved.]

**Standard 3. Caseload Limits and Types of Cases**

[Unchanged.]

**Standard 4. Responsibility of Expert Witnesses**

[Reserved.]

**Standard 5. Administrative Costs**

*Standard 5.1.* [Reserved.]

*Standard 5.2.*

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

B. Public defense attorneys shall have (1) access to an office that accommodates confidential meetings with clients and (2) a postal address, and adequate telephone services to ensure prompt response to client contact.

[Adopted effective October 1, 2012.]

**Standard 6. Investigators**

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

[Adopted effective October 1, 2012.]

**Standards 7-12**

[Reserved.]

**Standard 13. Limitations on Private Practice**

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

[Adopted effective October 1, 2012.]

**Standard 14. Qualifications of Attorneys**

*Standard 14.1.* In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and

C. Be familiar with the Washington Rules of Professional Conduct; and

D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association and when representing youth, be familiar with the Performance Guidelines for Juvenile Defense Representation approved by the Washington State Bar Association; and

E. Be familiar with the Washington State Guidelines for Appointed Counsel in Indigent Appeals; and

F. 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

G. Be familiar with mental health issues and be able to identify the need to obtain expert services; and

H. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

[Adopted effective October 1, 2012; amended effective April 24, 2018.]

*Standard 14.2. Attorneys' qualifications according to severity or type of case<sup>1</sup>:*

<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.

A-P. [Unchanged.]

*Standard 14.3. Appellate Representation.* Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

A. The minimum requirements as outlined in Section 1; and

B. Either:

i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or

ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing, or other comparable work.

C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a court of limited jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing a RALJ appeal.

[Adopted effective October 1, 2012.]

Standard 14.4. Legal Interns.

A. Legal interns must meet the requirements set out in APR 9.

B. Legal interns shall receive training pursuant to APR 9, and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held. [Adopted effective October 1, 2012.]

**Standards 15-18**

[Reserved.]

**CERTIFICATION OF COMPLIANCE**

For criminal and juvenile offender cases, a signed Certification of Compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

**SEPARATE CERTIFICATION FORM**

_____ <b>Court of Washington</b> for _____ _____ <b>State of Washington</b> _____,  Plaintiff vs. _____, Defendant	[ ] No.: _____  [ ] Administrative Filing CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CrR 3.1/CrRLJ 3.1/ JuCR 9.2
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The undersigned attorney hereby certifies:

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

2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:

**a. Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.

**b. Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.

**c. Investigators:** I have investigators available to me and will use 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

**CrRLJ 3.1****STANDARDS FOR INDIGENT DEFENSE****Preamble**

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

[Adopted effective October 1, 2012.]

**Standard 1. Compensation**

[Reserved.]

**Standard 2. Duties and Responsibilities of Counsel**

[Reserved.]

**Standard 3. Caseload Limits and Types of Cases**

[Unchanged]

**Standard 4. Responsibility of Expert Witnesses**

[Reserved.]

**Standard 5. Administrative Costs**

[Unchanged.]

**Standard 6. Investigators**

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

[Adopted effective October 1, 2012.]

**Standards 7-12**

[Reserved.]

**Standard 13. Limitations on Private Practice**

[Unchanged.]

**Standard 14. Qualifications of Attorneys**

*Standard 14.1.* In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and

C. Be familiar with the Washington Rules of Professional Conduct; and

D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association and when representing youth, be familiar with the Performance Guide-

lines for Juvenile Defense Representation approved by the Washington State Bar Association; and

E. Be familiar with the Washington State Guidelines for Appointed Counsel in Indigent Appeals; and

F. 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

G. Be familiar with mental health issues and be able to identify the need to obtain expert services; and

H. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

[Adopted effective October 1, 2012; amended effective April 24, 2018.]

*Standard 14.2. Attorneys' qualifications according to severity or type of case<sup>1</sup>:*

<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.

A-P. [Unchanged.]

*Standard 14.3. Appellate Representation.* Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

A. The minimum requirements as outlined in Section 1; and

B. Either:

i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or

ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing, or other comparable work.

C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a court of limited jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing a RALJ appeal.

[Adopted effective October 1, 2012.]

*Standard 14.4. Legal Interns.*

A. Legal interns must meet the requirements set out in APR 9.

B. Legal interns shall receive training pursuant to APR 9, and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

[Adopted effective October 1, 2012.]

### **Standards 15-18**

[Reserved.]

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For criminal and juvenile offender cases, a signed Certification of Compliance with Applicable Standards must be filed by an appointed

attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

_____ Court of Washington for _____	<input type="checkbox"/> No.: _____ <input type="checkbox"/> Administrative Filing
State of Washington _____, <div style="text-align: right;">Plaintiff</div> vs. _____, <div style="text-align: right;">Defendant</div>	CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CrR 3.1/CrRLJ 3.1/ JuCR 9.2

The undersigned attorney hereby certifies:

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\_\_\_\_\_  
 Signature, WSBA# \_\_\_\_\_  
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**JuCR 9.2**

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**e. 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