

WSR 21-13-056
RULES OF COURT
STATE SUPREME COURT
[June 4, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1348
COUNCIL ON PUBLIC DEFENSE'S)
INDIGENT DEFENSE APPELLATE)
PERFORMANCE GUIDELINES AND)
PROPOSED AMENDMENTS TO CrR)
3.1 STDS, CrRLJ 3.1 STDS, JuCR 9.2)
STDS, MPR 2.1 STDS)

The Washington State Bar Association Board of Governors, having recommended the adoption of 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, JuCR 9.2 Stds, MPR 2.1 Stds, 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 published in the Washington Reports and will become effective September 1, 2021.

DATED at Olympia, Washington this 4th day of June, 2021.

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 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
Travis Stearns, Chair, Council on Public Defense, Washington State Bar Association

Diana Singleton, Access to Justice Manager, Washington State Bar Association

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.

[Note: The following standards apply to CrR 3.1 stds., JuCR 9.2 stds., CrRLJ 3.1 stds., and MPR 2.1 stds.]

STANDARDS FOR INDIGENT DEFENSE

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. D. [Unchanged.]

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

E.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

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

G.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 Standard 14.4 [Unchanged.]

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.