



# WSBA

OFFICE OF THE EXECUTIVE DIRECTOR

Paula C. Littlewood  
Executive Director

direct line: 206-239-2120  
fax: 206-727-8310  
e-mail: paulal@wsba.org

October 10, 2011

The Honorable Barbara A. Madsen, Chief Justice  
Supreme Court of Washington  
Temple of Justice  
Post Office Box 40929  
Olympia, WA 98504-0929

**Re: WSBA Board of Governors Action Regarding CrR 3.1, CrRLJ 3.1 and JuCR 9.2  
Certification Standards**

Dear Chief Justice Madsen,

On September 22, 2011, the Washington State Bar Association Board of Governors passed, by a 10-2 vote, a motion recommending actions for approval by the Supreme Court of Washington for purposes of the certifications provided for by CrR 3.1, CrRLJ 3.1 and JuCR 9.2. These recommendations are in addition to those which had been proposed following the Board's June 3, 2011 meeting and which became the subject of the Court's Order No. 25700-A-983, dated July 13, 2011.

The Board's September 22, 2011 action includes a suggested Standard 3.4, a recommendation for adoption of misdemeanor standards, some suggested changes to the language in the proposed Standards that the Court has published for comment, and a suggested form for the Certification of Compliance. As you will recall, the Board's prior resolution on Standards did not include a recommendation regarding misdemeanor standards pending further study and discussion. At the September 22, 2011 meeting, the Board of Governors:

1. Approved amendments proposed by the WSBA's Council on Public Defense ("CPD") to Standard 3 and Standard 14 of the 2011 *WSBA Standards for Indigent Defense Services*, adopted by the Board of Governors at the June 3, 2011 meeting, and approved the CPD's proposed *Certification of Compliance* for adoption.
2. Approved resolutions requesting that the amendments to Standard 14 of the 2011 Standards for Indigent Defense Services be adopted by the Washington Supreme Court for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9.2, effective January 1, 2012; that the amendments to Standards 3.3 and

*Working Together to Champion Justice*

3.4 be adopted by the Washington Supreme Court for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9.2, effective January 1, 2013; and that new Standards 3.5 and 3.6 be adopted by the Washington Supreme Court for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9.2, effective January 1, 2013.

3. Approved a resolution requesting that the Certification of Compliance be adopted by the Washington Supreme Court for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9.2, effective January 1, 2012, with modifications for the implementation of caseload limits effective January 1, 2013.

In addition to the resolution, I enclose redline and clean copies of the amendments to Standard 3 and 14, as well as the suggested *Certification of Compliance* form.

Because suggested Standard 3.4, which is recommended to become effective January 1, 2013, is new, the Court may want to consider extending the comment period for that Standard. Furthermore the Court may wish to update Standard 3 and Standard 14 on the Court's website seeking comments on the proposed rules to assure that the public is commenting on the recommendations as they were finalized by the Board of Governors on September 22.

Sincerely,



Paula C. Littlewood

cc: Steven Crossland, President  
Washington State Bar Association

Jacqueline McMurtrie, Vice Chair  
WSBA Council on Public Defense

Marc A. Boman, Chair  
WSBA Council on Public Defense



# WSBA

## WASHINGTON STATE BAR ASSOCIATION BOARD OF GOVERNORS

### **Board of Governors Resolution Regarding CrR 3.1, CrRLJ 3.1 and JuCR 9.2 Certification Standards**

Whereas, the Washington Supreme Court has amended CrR 3.1, CrRLJ 3.1 and JuCR 9.2 to require that appointed counsel certify to the court that he or she complies with applicable Standards for Indigent Defense Services to be approved by the Supreme Court, and

Whereas the Washington Supreme Court has approved for publication Standards recommended for adoption by the Washington State Bar Association as follows:

1. 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, and
2. Standards 3.3 and 3.4 of the Washington State Bar Association 2011 Standards for Indigent Defense Services, except for the provision of Standard 3.4 relating to misdemeanor caseload standards, with a January 1, 2013 effective date, and

Whereas the Council on Public Defense has continued to develop a misdemeanor standard, has considered the views of numerous stakeholders and interested parties, and has proposed and recommended revisions to Standard 3 and Standard 14, as well as proposed Certification of Compliance forms; and

Whereas the Council on Public Defense has recommended that amendments to Standard 14 of the 2011 WSBA Standards for Indigent Defense Services be adopted by the Washington Supreme Court for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9.2, effective January 1, 2012; and that amendments to Standards 3.3 and 3.4 be adopted by the Washington Supreme Court for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9 effective January 1, 2013; and that Standards 3.5 and 3.6 be adopted by the Washington Supreme Court for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9, effective January 1, 2013; and

Whereas the Council on Public Defense has recommended that the Certification of Compliance forms be adopted by the Washington Supreme Court for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9.2, effective January 1, 2012, with modifications for the implementation of caseload limits effective January 1, 2013; and


Whereas the Board of Governors has reviewed and considered the recommendations of the Council on Public Defense,

Now, therefore, be it resolved:

The WSBA Board of Governors recommends that the Washington Supreme Court

1. Approve amended Standard 14 of the 2011 WSBA Standards for Indigent Defense Services for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9.2, effective January 1, 2012; and
2. Approve amended Standards 3.3 and 3.4 for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9 effective January 1, 2013; and
3. Approve Standards 3.5 and 3.6 for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9, effective January 1, 2013, and
4. Approve the Certification of Compliance forms for purposes of CrR 3.1, CrRLJ 3.1 and JuCR 9.2, effective January 1, 2012.

Approved by the Washington State Bar Association Board of Governors this 22nd day of September, 2011.



Paula C. Littlewood, Secretary

## STANDARD THREE: Caseload Limits and Types of Cases

### Standard:

1. The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
2. 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.
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 cases in the attorney's caseload.

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 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. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

4. **Caseload Limits:** The caseload of a full-time public defense attorney or assigned counsel shall 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

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court cases 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 *supra*; 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.

5. **Case Counting:** The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

1. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
2. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;
3. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
4. be periodically reviewed and updated to reflect current workloads; and
5. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute

more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, 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.

**6. Case Weighting:** The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

**A. Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.

**B. Case Weighting Downward:** Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.

1. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).
2. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions, representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.
3. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.
4. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the

caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.

5. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

### **Related Standards**

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, Formal Opinion 06-441. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

*ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases*, (1996)  
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-I.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

*Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [\[Link\]](#)



### STANDARD THREE: Caseload Limits and Types of Cases

#### Standard:

1. The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
2. 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.
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 ceilings/limits. 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, use of and/or social workers, or other expenditures of time and resources. In particular, felony Attorney 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.

The experience of a particular attorney is a factor in the composition of cases in the attorney's caseload.

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 filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in

AMENDMENTS TO STANDARD 3 OF THE WASHINGTON STATE BAR ASSOCIATION'S "STANDARDS ON INDIGENT DEFENSE" AS PROPOSED AND RECOMMENDED BY THE WSBA COUNCIL ON PUBLIC DEFENSE ON SEPTEMBER 7, 2011

order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

4. **Caseload Limits:** The caseload of a full-time public defense attorney or assigned counsel shall 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 in certain circumstances described below the caseload may be adjusted to no more than 400 cases, depending upon:~~

~~The caseload distribution between simple misdemeanors and complex misdemeanors; or~~

~~Jurisdictional policies such as post-filing diversion and opportunity to negotiate resolution of large number of cases as non-criminal violations;~~

~~Other court administrative procedures that permit a defense lawyer to handle more cases; or~~

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 cases 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 *supra*; 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.

5. **Case Counting:** The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

AMENDMENTS TO STANDARD 3 OF THE WASHINGTON STATE BAR ASSOCIATION'S "STANDARDS ON INDIGENT DEFENSE" AS PROPOSED AND RECOMMENDED BY THE WSBA COUNCIL ON PUBLIC DEFENSE ON SEPTEMBER 7, 2011

1. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
2. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;
3. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
4. be periodically reviewed and updated to reflect current workloads; and
5. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, 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.

**6. Case Weighting:** The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

**A. Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.

**B. Case Weighting Downward:** Listed below are some specific examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.

1. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).
2. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions, representations of material witnesses, and other matters or representations of clients that do

AMENDMENTS TO STANDARD 3 OF THE WASHINGTON STATE BAR ASSOCIATION'S "STANDARDS ON INDIGENT DEFENSE" AS PROPOSED AND RECOMMENDED BY THE WSBA COUNCIL ON PUBLIC DEFENSE ON SEPTEMBER 7, 2011

not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.

3. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.
4. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.
5. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

### **Related Standards**

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, Formal Opinion 06-441. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

ABA *Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases*, (1996)  
American Bar Association, Chicago, IL.

The American Council of Chief Defenders *Ethical Opinion 03-01* (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-I.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC *Recommendations for Representation of Children in Abuse and Neglect Cases* (2001). [\[Link\]](#)

**AMENDMENTS TO STANDARD 3 OF THE WASHINGTON STATE BAR ASSOCIATION'S "STANDARDS ON INDIGENT DEFENSE" AS PROPOSED AND RECOMMENDED BY THE WSBA COUNCIL ON PUBLIC DEFENSE ON SEPTEMBER 7, 2011**

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

*Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [\[Link\]](#)

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

Death Penalty Representation. Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and 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 aggravated homicide case; 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>

---

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

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

Death Penalty Representation. Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed ~~death penalty case or an aggravated homicide case~~ and 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 aggravated homicide case jury trial in which the death penalty was considered 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>

---

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

**CERTIFICATION OF COMPLIANCE**  
**“Applicable Standards” required by CrR3.1/ CrRLJ 3.1 / JuCr9.2**

**For criminal and juvenile offender cases, a signed certification of compliance with Applicable Standards must be filed by an appointed attorney either (1) in the attorney’s written notice of appearance or (2) by separate written certification.**

**The certification must be in substantially the following form:**

**NOTICE OF APPEARANCE FORM**

*I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent person and certify that: (1) I meet the attorney qualifications required for this case, (2) I comply with Standards 5.2 and 6.1, and (3) I will manage my caseload to allow each client the time and effort necessary to ensure effective representation.*

*[Effective 1/1/13: I will 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 the jurisdiction.]*

**SEPARATE CERTIFICATION FORM**

**(See next page)**



<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="display: flex; justify-content: space-between;"> <span><b>Court of Washington</b></span> </div> <div style="display: flex; justify-content: space-between;"> <span><b>for</b></span> </div>	
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="display: flex; justify-content: space-between;"> <span><b>State of Washington</b></span> </div> <div style="display: flex; justify-content: space-between;"> <span></span> <span>Plaintiff</span> </div>	
<div style="display: flex; justify-content: space-between;"> <span>vs.</span> </div> <div style="border-bottom: 1px solid black; margin-top: 10px;"></div> <div style="display: flex; justify-content: space-between;"> <span></span> <span>Defendant</span> </div>	

**No.**

Certification of Appointed Counsel of  
Compliance with Standards Required by  
CrR 3.1 / CrRLJ 3.1 / JuCR 9.2

Nature of the Charge(s) (most severe): \_\_\_\_\_

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. **Case Specific Qualification:** As lead attorney in the above case I meet the minimum qualifications in Standard 14 for representation of the defendant on the charge(s) filed.
  - c. **Office:** I have an office for private conferences with clients, mail, and telephone services that comply with Standard 5.2.
  - d. **Investigators:** I have investigators available to me and will comply with Standard 6.1.
  - e. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in this case.  
[Effective 1/1/13: I will 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.]

\_\_\_\_\_  
Defendant's Lawyer, WSBA#

\_\_\_\_\_  
Date