

Suggested Amendments to WSBA Standards for Indigent Defense

Markup:

DEFINITIONS

1. [Unchanged.]

2. Case – A “case” is a new court filing or action that names 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. For additional explanation in relation to caseload capacity, refer to Standards 3.H and 3.I.

3. – 7. [Unchanged.]

8. 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.

9. 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.”

[Remaining definitions unchanged with the exception of renumbering to accommodate new definitions 8 and 9.]

STANDARD ONE: Compensation

[Unchanged.]

STANDARD TWO: Duties and Responsibilities of Counsel

[Unchanged.]

STANDARD THREE: Caseload Limits and Types of Cases

Standard:

3.A. – 3.G. [Unchanged.]

3.H. Definition of case.

A “case” is a new court filing or action that names 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.

3.I. – 3.J. [Unchanged.]

3.K. Other Case Types.¹⁴

Appeals: 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.)

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 dependency/termination of parental rights for parent and child(ren) representation per attorney per year.~~

Civil Commitment: 250 Civil Commitment cases per attorney per year.

3.L. – 3.N. [Unchanged.]

3.O. Implementation of Standards

¹⁴ The standards under this subsection, with the exception of family defense caseload standards, are under review. To provide guidance in the interim, the prior standards are included only until revisions are approved.

Standard 3 shall be implemented in phases and shall go into effect on July 2, 2025. The 2024 revisions to these Indigent Defense Standards shall be implemented on the following schedule:

Until July 2, 2025, the caseload standards as adopted in pre-existing *WSBA Standards of Indigent Defense Services* and *Court Rule Standards of Indigent Defense* shall apply: The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

150 Felonies per attorney per year;

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;

250 Juvenile Offender cases per attorney per year.

Phase 1:

Beginning July 2, 2025, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 110 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 280 misdemeanor case credits. 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.

Phase 2:

Beginning July 2, 2026, within the twelve months following, each full-time felony attorney shall be assigned cases constituting no more than 90 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 225 misdemeanor case credits. 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.

Phase 3:

Beginning July 2, 2027, and for any twelve-month period following, each full-time felony attorney shall be assigned cases constituting no more than 47 felony case credits and each full-time misdemeanor attorney shall be assigned cases constituting no more than 120 misdemeanor case credits.

STANDARD FOUR: Responsibility for Expert Witnesses

Standard:

4.A. [Unchanged]

4.B. Mitigation Specialists, Social Workers

Mitigation specialists and social workers shall be made readily available to public defense attorneys to provide support, such as release plans, treatment services, housing, health care, and to develop dispositional and sentencing alternatives.

In public defense agencies, by July 3, 2028, a minimum of one full-time mitigation specialist or social worker shall be provided for every three full-time attorneys. Public defense agencies shall make meaningful progress towards this ratio prior to July 3, 2028.¹⁵ Attorneys representing clients in post-adjudication phases may require different resources. Public defense agencies that do not employ a sufficient number of mitigation specialists or social workers to meet this ratio shall enter into contracts with additional mitigation specialists or social workers to provide the same resource level.

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

¹⁵ Support staff necessary for effective representation “includes one supervisor for every ten attorneys; one investigator for every three attorneys; one social service caseworker for every three attorneys; one paralegal for every four felony attorneys; and one secretary for every four felony attorneys.” Bureau of Justice Assistance, United States Department of Justice’s *Keeping Defender Workloads Manageable*, 10 (2001), available at <https://www.ncjrs.gov/pdffiles1/bja/185632.pdf>. See also, National Association for Public Defense Policy Statement on Public Defense Staffing (May 2020), available at <https://publicdefenders.us/resources/policy-statement-on-public-defense-staffing/>.

1 the funding for parent’s defense shall make meaningful progress towards the ratio of one full-time family
2 defense social worker or family defense social service worker for every one full-time parent’s defense
3 attorney prior to July 3, 2028. Public defense agencies responsible for administering the funding for child
4 and youth representation shall ensure that adequate social work support services are made available to
5 meet the case and support needs of children and youth in family defense cases.

6 Temporary reductions in agency staff because of illness, disability, or reasonable delay in filling vacancies
7 do not constitute failure to comply with this standard. Attorneys representing clients in post-adjudication
8 phases may require different resources.

9 Public defense attorneys under contract or in assigned counsel systems should have access to mitigation
10 specialists and social workers, consistent with 4.A.

11 4.C. – 4.E. [Unchanged.]

13 **STANDARD FIVE – SEVEN** [Unchanged.]

15 **STANDARD EIGHT: Reports of Attorney Activity**

16 ***Standard:***

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

23 For attorneys under contract, payment should be made monthly, or at times agreed to by the parties,
24 without regard to the number of cases closed in the period.

26 **STANDARD NINE: Training**

[Unchanged.]

STANDARD TEN: Supervision

Standard:

10.A. General Provisions.

In public defense agencies and contracted private law firms, a minimum of one full-time supervisor should be employed for every ten full-time public defense attorneys or one half-time supervisor for every five public defense attorneys. Full-time supervisors should not carry caseloads, but supervisors may act as co-counsel in a limited number of cases to provide mentoring and training experience for their supervisees. Part-time supervisors should limit their caseloads on a pro-rata basis. Supervisors should have training in personnel management and supervision. Supervisors should be qualified under Standard 14 for the practice area(s) they are supervising.

10.B. 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.

STANDARD ELEVEN – STANDARD THIRTEEN [Unchanged.]

STANDARD FOURTEEN: Qualifications of Attorneys

Standard:

1 14.A. – 14.B. [unchanged]

2 14.C. Attorneys’ Qualifications by Category/Type of Case and Representation Type (Trial or Appellate)

3 1. – 3. [unchanged]

4 **4. Civil Cases – Trial Court Cases**

5 **a. ~~Representing Children and Youth in Dependency~~Family Defense Cases – Attorneys**
6 ~~representing children and youth in dependency matters should be familiar with expert~~
7 ~~services and treatment resources available in dependency cases.~~

8 i. **Youth –** Each lead counsel representing children and youth in a ~~dependency~~
9 family defense matter shall meet the following requirements:

10 i.1. Meet the minimum requirements set forth in Section 14.A₂ and

11 2. Abide, at minimum, by the requirements for training and experience in
12 the [Representation of Children and Youth in Dependency Cases Practice,](#)
13 [Caseload and Training Standards,](#) Washington Supreme Court
14 Commission on Children in Foster Care, at the Request of the Legislature
15 (Rev. Sept. 2022),¹⁶ established in accordance with Section 9, Chapter
16 210, Laws of 2021 and adopted by the Washington State Supreme Court
17 Commission on Children in Foster Care.

18 ii. ~~Have knowledge, training, experience, and ability in communicating effectively~~
19 ~~with children, or have participated in at least one consultation per case either~~
20 ~~with a state Office of Civil Legal Aid resource attorney or other attorney qualified~~
21 ~~under this section; and~~

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26 ¹⁶ Available at: <https://www.courts.wa.gov/subsite/CommFC/docs/revised%20practice%20standards%20for%20representation%20of%20children%20and%20youth%20in%20dependency%20cases.pdf>.

1 iii. ~~Attorneys representing children and youth in termination of parental rights cases~~
2 ~~shall have six months' dependency experience or have significant experience in~~
3 ~~conducting complex litigation.~~

4 **b.ii. Representing Parents and Respondents in Family Defense Cases in Dependency**

5 **Cases** – Attorneys Each counsel representing parents in a dependency family
6 defense matter ~~should be familiar with expert services and treatment resources~~
7 ~~available in dependency cases. Each lead counsel representing children and youth~~
8 ~~in a dependency matter shall meet the following requirements:~~

9 i. 1. Meet the minimum requirements as outlined in Section 14.A; and

10 ii. 2. Be familiar with the [American Bar Association Standards of Practice for](#)
11 [Attorneys Representing Parents in Abuse and Neglect Cases and the](#)
12 [Family Justice Initiative Attributes](#); ~~and~~

13 i. ~~Attorneys representing parents in termination of parental rights cases shall have~~
14 ~~either six months' dependency experience or significant experience in handling~~
15 ~~complex litigation.~~

16 **iii. All Family Defense Attorneys:**

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

23 2. **Must have proficiency.** Where a contracted provider does not have a
24 supervising attorney, the contracting agency must perform an
25 assessment of proficiency and the need for any further orientation or
26 consultation before the contracted attorney can conduct any fact-finding

1 or evidentiary hearing on their own. To be assessed as proficient and able
2 to effectively fulfill the duties of representing families in dependency
3 courts, the contracting agency shall consider, at a minimum, the
4 following:

- 5 i. The number of years of experience doing complex litigation.
- 6 ii. The number of years of dependency experience.
- 7 iii. Whether the attorney has experience using experts in
8 dependency or termination proceedings.
- 9 iv. Education, certification, or other demonstrated proficiency in
10 child welfare.
- 11 v. Whether they have previously acted as lead counsel in any of the
12 following proceedings:

- 13 1. Shelter Care
- 14 2. Dependency Fact Finding
- 15 3. Title 13 Guardianship or
- 16 4. Termination Trial.

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

- 22 i. Is consistent with RPCs regarding confidentiality, including but
23 not limited to RPC 1.6
- 24 ii. Is designed to assist attorneys new to family defense in
25 dependency, guardianship and termination cases, and

1 iii. Will allow consultants to provide technical assistance and
2 additional representation to parents or children assigned to the
3 attorney.

4 **be. Civil Commitment Cases** [Unchanged.]

5 **cd. Representing Clients Acquitted by Reason of Insanity** [Unchanged.]

6 **de. Sex Offender Commitment Cases** [Unchanged.]

7 **ef. Contempt of Court Cases** [Unchanged.]

8 **5. – 6.** [Unchanged.]

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10 **STANDARD FIFTEEN – NINETEEN** [Unchanged.]

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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.

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Public defense attorneys under contract or in assigned counsel systems should have access to mitigation specialists and social workers, consistent with 4.A.

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10.A. General Provisions.

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10.B. 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.

STANDARD ELEVEN – STANDARD THIRTEEN [Unchanged.]

STANDARD FOURTEEN: Qualifications of Attorneys

Standard:

1 14.A. – 14.B. [unchanged]

2 14.C. Attorneys' Qualifications by Category/Type of Case and Representation Type (Trial or Appellate)

3 1. – 3. [unchanged]

4 **4. Civil Cases – Trial Court Cases**

5 **a. Family Defense Cases –**

6 **i. Youth** – Each lead counsel representing children and youth in a family defense
7 matter shall meet the following requirements:

- 8 1. Meet the minimum requirements set forth in Section 14.A; and
- 9 2. Abide, at minimum, by the *Representation of Children and Youth in*
10 *Dependency Cases Practice, Caseload and Training Standards*, (Rev. Sept.
11 2022),¹⁹ established in accordance with Section 9, Chapter 210, Laws of
12 2021 and adopted by the Washington State Supreme Court Commission
13 on Children in Foster Care.

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

- 16 1. Meet the minimum requirements as outlined in Section 14.A; and
- 17 2. Be familiar with the *American Bar Association Standards of Practice for*
18 *Attorneys Representing Parents in Abuse and Neglect Cases and the*
19 *Family Justice Initiative Attributes*.

20 **iii. All Family Defense Attorneys:**

- 21 **1. Must complete an orientation training on dependency, guardianship,**
22 **and termination law.** Where a contracted provider has an identified
23 supervising attorney, the supervising attorney may provide this
24

25 ¹⁹ Available at: <https://www.courts.wa.gov/subsite/CommFC/docs/revised%20practice%20standards%20for%20representation%20of%20children%20and%20youth%20in%20dependency%20cases.pdf>.

1 orientation. Where a contracted provider does not have an identified
2 supervising attorney, this orientation shall be provided by the contracting
3 agency.

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

- 12 i. The number of years of experience doing complex litigation.
- 13 ii. The number of years of dependency experience.
- 14 iii. Whether the attorney has experience using experts in
15 dependency or termination proceedings.
- 16 iv. Education, certification, or other demonstrated proficiency in
17 child welfare.
- 18 v. Whether they have previously acted as lead counsel in any of the
19 following proceedings:

- 20 1. Shelter Care
- 21 2. Dependency Fact Finding
- 22 3. Title 13 Guardianship or
- 23 4. Termination Trial.

24 For attorneys who do not have a supervising attorney and who have been
25 assessed by a contracting agency as lacking proficiency to handle a fact-
26 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:

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

b. Civil Commitment Cases [Unchanged.]

c. Representing Clients Acquitted by Reason of Insanity [Unchanged.]

d. Sex Offender Commitment Cases [Unchanged.]

e. Contempt of Court Cases [Unchanged.]

5. – 6. [Unchanged.]

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