



Association of Washington Superior Court Administrators

President

CHRIS GADDIS
Pierce County Superior Court
930 Tacoma Ave S, Rm 334
Tacoma WA 98402-2108
(253) 798-3654
cgaddis@co.pierce.wa.us

Vice President

ASHLEY CALLAN
Spokane County Superior Court
1116 W Broadway Ave
Spokane WA 99260-0350
(509) 477-4401
acallan@spokanecounty.org

Secretary/Treasurer

SARAH KEITH
Kittitas County Superior Court
205 W 5th Ave, Ste 207
Ellensburg WA 98926-2887
(509) 962-7533
sarah.keith.sc@co.kittitas.wa.us

Past President

FRANK MAIOCCO
Kitsap County Superior Court
614 Division St MS 24
Port Orchard WA 98366-4683
(360) 337-7140
fmaiocco@co.kitsap.wa.us

April 5, 2022

VIA EMAIL

Honorable Charles W. Johnson
Honorable Mary I. Yu
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Comment on Proposed General Rule 42 – Independence of Public Defense Services

Dear Justice Johnson, Justice Yu, and Rules Committee Members,

The Association of Washington Superior Court Administrators (AWSA) respectfully opposes the version of GR 42 as proposed by the Washington State Bar Association. While we support the spirit of GR 42 and its attempt to maintain the independence of public defense, we have some concerns about the practicality of this rule for many courts across our state.

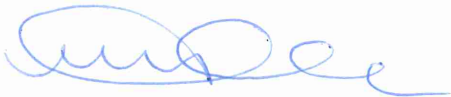
It is unclear from reading proposed GR 42 if this rule is intended to apply to all indigent defense or more specifically indigent criminal defense. If the rule is intended to apply to indigent criminal defense, it would be helpful to specify that in the rule. The court is statutorily required to appoint counsel for indigent individuals in several other case types – Uniform Guardianship Act and Child in Need of Services petitions are two examples. In many counties, including those with a local public defense office, the court has taken the responsibility for recruiting and compensating attorneys willing to accept these non-criminal appointments. This practice has developed because the court is statutorily required to appoint and local public defense offices have been unwilling to manage non-criminal attorney appointments.

Section (d)(1) states, “Judges and judicial staff in superior court and courts of limited jurisdiction shall neither manage nor oversee public defense services, including public defense contracts and assigned counsel lists.” In many counties, there is not another entity in the county governance structure assigned the responsibility for attorney recruitment and compensation, which leaves the court without an independently-established list of assigned counsel or contractors as the proposed rule requires.

Section (d)(3) states, "If no qualified attorney on the list is available, a judicial officer shall appoint an attorney who meets the qualifications in the Supreme Court Standards for Indigent Defense." This assumes there is an independently-established list of assigned counsel or contractors. Especially as it relates to non-criminal attorney appointments, often times there is not an established list without court involvement. This section could be amended to state, "If no qualified attorney on the list is available, or an independently-established list of assigned counsel is not available, a judicial officer shall appoint an attorney who meets the qualifications in the Supreme Court Standards for Indigent Defense." This modification would allow a court to appoint an attorney as statutorily-required without conflicting with the General Rule.

In discussing this proposed rule as an Association, it is clear that superior courts across the state would prefer not to be responsible for attorney recruitment, contracts, or compensation. However, this responsibility has fallen on the court out of necessity, absent the affirmative assignment of these responsibilities by the respective county executive, counsel, or board of commissioners. If the Rules Committee rejects the concerns of AWSCA and refers the rule as drafted to the Supreme Court, a delayed implementation will be critical for superior courts. Many courts, especially in rural counties, currently have contracts for both criminal and non-criminal indigent public defense. It will take time for courts to work with their county to transfer this responsibility to another entity.

Thank you for your consideration,



Ashley Callan
Vice President
Association of Washington Superior Court Administrators

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To: [Linford, Tera](#)
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Cc: Chris Gaddis <chris.gaddis@PIERCECOUNTYWA.GOV>
Subject: Comment on Proposed GR 42

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Good morning –
Please find the attached comment from the Association of Washington Superior Court Administrators on proposed General Rule 42 – Independence of Public Defense Services.

Thank you,

Ashley Callan
Superior Court Administrator
477-4401

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