

Submitted via email attachment

October 30, 2024

The Honorable Chief Justice Steven González
Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

RE: Comment on the Proposed Amendments to the Supreme Court Standards for Indigent Defense

Dear Chief Justice González and Members of the Court:

This comment is submitted in response to the Washington State Bar Association's (WSBA) suggested amendments to the Washington Supreme Court's Standards for Indigent Defense (hereafter, "Supreme Court Standards"). It appears the WSBA proposes that all the newly revised (March 8, 2024) WSBA Standards for Indigent Defense Services be adopted by the Court in its Supreme Court Standards.

This comment¹ is specific to all the WSBA's proposed amendments to the current Supreme Court Standards and proposed new standards, except for Standards 3 and 14 which are the subject of a separate joint comment submitted by Eileen Farley and me.

Historically, the Supreme Court Standards include only 5 of the 19 subjects addressed in the WSBA's Standards. The Supreme Court Standards currently include only these five subjects:

1. **Standard 3 Caseload Limits and Types of Cases**
2. **Standard 5 Administrative Costs** (5.2 only)
3. **Standard 6 Investigators** (truncated to "[p]ublic defense attorneys shall use investigation services as appropriate.")
4. **Standard 13 Limitations on Private Practice**
5. **Standard 14 Qualifications of Attorneys**

The Supreme Court Standards, unlike the WSBA Standards, require all public defense attorneys certify every quarter compliance with the Supreme Court Standards.

Based on my experience² and recognizing the Court's authority to establish standards only for lawyers, not for state or local legislative authorities/jurisdictions, I recommend the Court adopt the following **eight New or Amended Supreme Court Standards in addition to Standards 3 and 14**, as proposed by the WSBA:

1. **Standard 1 Compensation** – 1.C. Flat Fee and Per Case Compensation Agreements, 1.D. Additional Compensation, and 1.E. Substitute Attorney Costs

¹ I serve on the WSBA Council on Public Defense. This comment is submitted solely on my own behalf, not on behalf of the Council. This comment is not intended to delay the Court's adoption of the WSBA's suggested amendments to Standards 3 and 14.

² Manager of Clark County, Washington's public defense administrative office (2008-2019), director of Oregon's statewide public defense system (1988-2003), public defender and assistant director at a Multnomah County, Oregon nonprofit public defense office (1982-1988)

2. **Standard 2 Duties and Responsibilities of Counsel** – second paragraph except the last sentence
3. **Standard 4 Responsibility for Expert Witnesses** – 4.B. Mitigation Specialists, Social Workers, 4.C. Mental Health Professionals for Evaluations, 4.D. Interpreters and Translators, and 4.E. Cost of Expert Services
4. **Standard 6 Investigators** – 6.A. Access to Investigation Services, 6.B. Investigation for Public Defense Agencies, and 6.E. Cost of Investigation Services
5. **Standard 7 Support Services** – 7.A. Support Services Necessary for Legal Defense - first two sentences, 7.B. Providing for Support Services in Contract and Assigned Counsel Compensation first sentence only, and 7.C. Necessary Legal Assistants/Paralegals Ratio
6. **Standard 9 Training** – 9.A. Annual Training
7. **Standard 10 Supervision**
8. **Standard 12 Substitution of Counsel** – 12.A. Availability at No Cost to Attorney and 12.B. Subcontracting

Inclusion of these standards in the Supreme Court Standards will require modifications to the Certification of Compliance included in the WSBA's GR 9 materials.

The hundreds of other comments submitted to the Court focus on Standard 3, relating to public defense caseloads. We know from those comments, surveys, job interviews, exit interviews, and law school visits that excessive caseloads is only one reason attorneys increasingly do not seek or stay in public defense work. The ability to attract and retain attorneys for any legal practice area relies on the opportunities and satisfaction afforded by the practice. Training, support levels, supervision, training, compensation, workload, work/life balance are inextricably linked together; as is, respect by system stakeholders, fellow lawyers, clients, and the public.

These too-often missing work place necessities make the escalating public defense crisis in this and other states difficult to stem, let alone solve. For example, attorneys with substantial student loan debt who entered law school committed to becoming a public defender too often recognize the reality of that debt when faced with disparate work conditions and compensation often significantly less than the private sector or other public service work.

The ability to recruit and retain public defense attorneys will improve if the above standards are adopted by this Court. It also requires a collaborative "all hands-on deck" response by this Court, the legislature, counties, cities, local judges and court administrators, prosecutors, and public and private defense counsel. Inclusion of new and amended Supreme Court Standards that address support services, training, supervision, workloads, qualifications, and contract provisions are critical to ensuring the availability of sufficient numbers of public defense attorneys to provide effective representation for all who qualify.

Sincerely,

Ann Christian

Ann Christian

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Good morning,
Attached is my Comment on the WSBA suggested amendments to the Supreme Court Standards for Indigent Defense. This comment addresses all the WSBA suggested amendments, except for Standards 3 and 14 which are the subject of a separate comment submitted by Eileen Farley and me.
Thank you,
Ann Christian