

Supreme Court Rules Committee
c/o Clerk of the Supreme Court Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929
via email: supreme@courts.wa.gov

Re: *Proposed Family Defense Standards (CrR3.1, CrRLJ3.1, and JuCR9.2)*

I write in my individual capacity as the chair of the subcommittee of the Council on Public Defense that drafted the proposed family defense standards.¹ Although I echo many of the sentiments from other practitioners, I focus this comment on the implementation and enforcement of the proposed standards.

The Proposed Standards Would Create a System to Train New Lawyers

The shortage of lawyers in this field is the principal reason to *adopt* rather than to reject (or delay) the implementation of these standards.

Washington has a structural problem in the administration of family defense representation that is leading to a shortage of qualified lawyers and ineffective representation for parents in many parts of the state: there is no required system in place to supervise or certify new attorneys. When experienced lawyers leave the profession, they are difficult to replace because there is virtually no on-ramp for new lawyers into this field. And, worse yet, because there are no minimum standards for training or experience, *any* lawyer – no matter how ill-prepared – can be awarded a parent defense contract under the existing court rules.

The proposed family defense standards would correct this problem in two ways:

- Providing caseload reductions for supervision (Standard 10; 3.4).
- Establishing training, experience, and certification requirements (Standard 14).

Caseload reductions for supervision:

Unlike criminal defense, the majority of family defense representation in Washington is provided by solo practitioners or small firms. The existing court rule does not provide these contractors with any caseload reduction when they supervise or train new attorneys. Although some dedicated attorneys do hire and train new lawyers, there is little incentive to do so under the existing rules.

The new standards would provide caseload reductions (as in criminal practice) based on the number of attorneys supervised, creating incentives for small firms to train and mentor new lawyers. (Standard 10). The standards would also allow supervisors to receive credit for cases that they co-try with new attorneys. (Standard 3.4). This new standards would, therefore, give experienced attorneys both the capacity and the incentive to mentor others.

The Washington State Office of Public Defense (state OPD) cannot supervise the lawyers with whom they contract. See RPC 1.6; WSBA advisory bar ethics opinions: [1990-183](#), [1999-195](#), [2002-1999](#), [2003-2035](#), [2005-2081](#), [2024-02](#). While attorneys can ask for advice from state OPD (with the

¹ I have recently resigned my position at the King County Department of Public Defense.

informed consent of their client), it is not ethical for a funder to demand client confidences for the purpose of supervising an attorney. *Id.* The proposed standards allow state OPD to receive some generalized information about cases, consistent with the Rules of Professional Conduct. (Standard 8). However, this is not a substitute for supervision.

Because OPD cannot request access to client confidential information or direct a contractor in their litigation, they cannot adequately supervise attorneys. It is, therefore, critically important that we create a structure of trusted supervisors who can protect client confidences and provide oversight and supervision of new attorneys. The new standards would accomplish that.

Certifications of competence:

Another significant problem in this field is that, unlike criminal practice, there is no required assessment of attorney competence. Under the existing court rule, there are no minimum experience requirements for attorneys handling dependency cases; a termination case requires only 6 months of prior dependency experience. The proposed standards would correct that deficiency by creating new qualifications for attorneys that require both training and an assessment of an attorney's proficiency. (Standard 14).

Dependency law is incredibly complex and adjudicates fundamental constitutional rights; yet this area of law is not a core component of a law school curriculum. Opportunities to learn this area of law are rare in Washington law schools. Further, like any complex area of practice, one-off trainings – without ongoing case-specific supervision – will be insufficient to ensure the minimum competence of attorneys in this field.

Each dependency case involves countless, fraught strategic decisions. The only way to grow and learn this area of law is with the collaboration and support of an experienced supervisor. New attorneys require repeated, individualized case-specific feedback to improve. The proposed standards provide that necessary structure.

Any Rule Adopted by the Court Must Be Enforced

It goes without saying that rules must be enforceable – that is the meaning of the rule of law. Therefore, any rule the Court adopts should come with the expectation that it will be followed. Yet, public statements by state OPD raise concerns that, without significant oversight, even a rule adopted by this Court would not be implemented. Caseload standards cannot be merely aspirational. If they were so, we would lose the ability to hold systems accountable for their failure to provide adequate family defense.

Unfortunately, therefore, it may be necessary to delay implementation of the caseload reductions contemplated by these standards (Standard 3.7) for an additional year, while immediately implementing the supervision and certification requirements (described above), to ensure that the standards themselves can be followed.

The challenges facing implementation in this area are exacerbated by the following dynamics:

- *First*, solo practitioners are poorly situated to refuse contracts offered by OPD, even if the contract violates the indigent defense standards; they risk their livelihood on the one hand or their ethical (and/or legal) obligations on the other. Solo practitioners should not be put in

that position – rather, contracts offered by state OPD should comply, at minimum, with court and ethics rules.

- *Second*, appellate review provides little comfort for families who are failed by their lawyer. Ineffective representation often leads to the prolonged, unnecessary out of home placement of a child, an injustice that becomes harder to challenge the longer it is maintained. Even raising ineffective assistance of counsel on appeal (assuming the client has a right to appeal and is notified about it) can take years. When parents and children receive ineffective representation, the harms that result cannot be meaningfully cured by appellate review, leaving them without an adequate remedy.
- *Third*, nearly all families entangled in these systems are living in extreme poverty; they are disproportionately Black and Indigenous. In family defense, our clients are parents who are accused of mistreating their children and children who are (too often) accused of poor behavior themselves. These clients are vulnerable to society's judgements and are therefore less likely than other litigants to benefit from widespread public support. Accordingly, system failures in this area are more likely to go unnoticed and unremedied. Oversight is further hindered by the fact that the case files in these matters are confidential. RCW 13.50.100. All of these factors make it more challenging to ensure adequate representation.

Accordingly, to implement the proposed standards, it will be incumbent on state OPD to embrace their obligation to comply. Yet, despite participating in the drafting of these standards, they did not ask the legislature to fund implementation. See [Office of Public Defense | Office of Financial Management](#). According to state OPD, the total cost of implementing phase one of the standards for parent representation would have been only \$4,460,931, a relatively modest investment when compared with the nearly three hundred-million-dollar policy-level proposed budget the agency pursued. However, that budget request was not made.

OPD's decision not to make this budget ask came as a surprise; at no point during any of the discussions of the proposed standards over the preceding six months, either in the subcommittee, in the Council on Public Defense, or before the full WSBA Board of Governors, did OPD express their plan to delay implementation of the standards. And yet, by not requesting the funds to comply, state OPD all but ensured that implementation could not proceed on schedule.

Foreseeably, state OPD now faces challenges with implementation. However, these challenges cannot be offered as an ongoing excuse for non-compliance with the standards if adopted, especially since these are standards that OPD asked for and had a significant role in drafting. Instead, the Court must chart a path forward that is both possible and enforceable, even if that requires adopting the standards with a short delay in the effective date provisions of Standard 3.7.

Court Rule Standards Should Create Caseload Parity for Parent and Child Representation

By adopting a lower caseload for child representation, the Court has already recognized that the existing 80-case caseloads are unworkable. *Representation of Children and Youth in Dependency Cases Practice, Caseload and Training Standards*, (Rev. Sept. 2022), Washington State Supreme Court Commission on Children in Foster Care. Therefore, the Office of Civil Legal Aid Child Representation Program is already largely in compliance with phase one of the proposed

standards. Implementing phase one of Standard 3.7 would, in turn, merely align parent representation caseloads with the existing child representation caseloads.

Creating this alignment is necessary to prevent competition for the same limited pool of attorneys and to encourage cooperation between the two state agencies. Instead of maintaining two separate systems, with different caseload calculations and different rates of pay, attorneys and families will benefit when the same standards apply to both parent and child representation statewide. Not only will contractors be better able to accept mixed caseloads of parent and child representation, but families will benefit from having lawyers who have a mix of different experiences and roles. Treating the two kinds of representation the same was supported by the Washington-specific workload study that our subcommittee undertook to develop the proposed rule.

Recruiting

On the other hand, failing to adopt the proposed standards will, predictably, lead to a deepening crisis in this field. It will be very challenging to recruit new lawyers into the current working conditions imposed by the existing court rules, especially in more rural areas. Working with law students over the years I have learned that, although there is interest in our field, students are understandably skeptical about whether a career in family defense can be both sustainable for them and beneficial for their clients. New lawyers want to do good work, to feel proud of what they do. They do not want to go into business alone, with no support or safety net, and risk causing harm to clients. As long as court rules allow untrained, unsupported family defenders to be given a contract for an unworkable number of cases, young lawyers' skepticism about this field will remain justified.

For the reasons set forth above, I respectfully request the Court adopt the proposed indigent defense standards for family defense cases. I acknowledge that a slight delay in the effective date provisions of Standard 3.7 may be necessary to ensure the more important goal: that the standards are implemented and enforced.

Best regards,
Tara Urs
Tara.urs@gmail.com

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Farino, Amber](#)
Cc: [Ward, David](#)
Subject: FW: Comment on Family Defense Standards
Date: Wednesday, April 30, 2025 8:19:26 AM
Attachments: [Urs Comment.pdf](#)

From: Tara Urs <tara.urs@gmail.com>
Sent: Tuesday, April 29, 2025 9:29 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on Family Defense Standards

You don't often get email from tara.urs@gmail.com. [Learn why this is important](#)

External Email Warning! This email has originated from outside of the Washington State Courts Network. Do not click links or open attachments unless you recognize the sender, are expecting the email, and know the content is safe. If a link sends you to a website where you are asked to validate using your Account and Password, **DO NOT DO SO!** Instead, report the incident.

Attached please find my comments on the proposed family defense standards. Thank you for considering this submission.