

FILED
SUPREME COURT
STATE OF WASHINGTON
June 9, 2022
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED NEW
GENERAL RULE [42] AND PROPOSED
AMENDMENTS TO CrR 3.1, JuCR 9.2, AND
CrRLJ 3.1

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ORDER

NO. 25700-A-1451

The Washington State Bar Association, having recommended the adoption of the proposed new General Rule [42] and proposed amendments to CrR 3.1, JuCR 9.2, and CrRLJ 3.1, and the Court having considered the proposed new general rule and proposed amendments, and having determined that the proposed new general rule and proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the proposed new general rule and proposed amendments as attached hereto are adopted.


(b) That the proposed new general rule and proposed amendments will be published in the Washington Reports and will become effective January 1, 2023.

ORDER


IN THE MATTER OF THE PROPOSED NEW GENERAL RULE [42] AND PROPOSED AMENDMENTS TO CrR 3.1, JuCR 9.2, AND CrRLJ 3.1

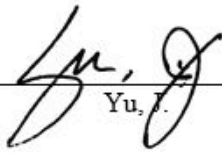
DATED at Olympia, Washington this 9th day of June, 2022.

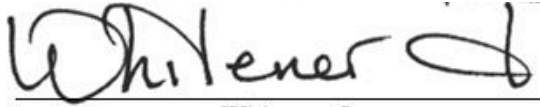

González, C.J.

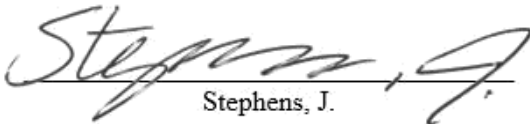

Johnson, J.


Gordon McCloud, J.


Owens, J.


Yu, J.


Whitener, J.


Stephens, J.

[NEW]

GR 42
INDEPENDENCE OF PUBLIC DEFENSE SERVICES

(a) Purpose and policy. The purpose of this rule is to safeguard the independence of public defense services from judicial influence or control. Consistent with the right to counsel as provided in article I, sections 3 and 22 of the Washington State Constitution and in Washington statutes, it is the policy of the judiciary to develop rules that further the fair and efficient administration of justice. In promulgating this Rule, the Washington Supreme Court seeks to prevent conflicts of interest that may arise if judges control the selection of public defense administrators or the attorneys who provide public defense services, the management and oversight of public defense services, and the assignment of attorneys in individual cases.

(b) Scope. This rule applies to superior courts and courts of limited jurisdiction.

(c) Selection of the public defense administrator and public defense attorneys. Judges and judicial staff in superior courts and courts of limited jurisdiction shall not select public defense administrators or the attorneys who provide public defense services.

(d) Management and oversight of public defense services.

(1) Judges and judicial staff in superior courts and courts of limited jurisdiction shall neither manage nor oversee public defense services, including public defense contracts and assigned counsel lists. Judges should encourage local governments to have attorneys with public defense experience manage and oversee public defense services.

(2) The terms “manage” and “oversee” include: drafting, awarding, renewing, and terminating public defense contracts; adding attorneys or removing them from assigned counsel lists; developing or issuing case weighting policies; monitoring attorney caseload limits and case-level qualifications; monitoring compliance with contracts, policies, procedures and standards; and recommending compensation.

(e) Assignment of public defense attorneys in individual cases.

(1) Consistent with federal and state constitutions, applicable statutes and rules of court, the role of judges and their staff in the assignment of a specific attorney in an individual case is to: a) determine whether a party is eligible for appointment of counsel by making a finding of indigency or other finding that a party is entitled to counsel; or b) refer the party for an indigency determination; and c) refer the party to a public defense agency or a public defense administrator to designate a qualified attorney. Alternatively, a public defense administrator may, prior to a court hearing where eligibility is determined, designate a qualified attorney to be appointed if the court finds the party is eligible.

(2) If there is no public defense agency or administrator, a judicial officer should appoint a qualified attorney, on a rotating basis, from an independently established list of assigned counsel or contractors.

(3) 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.

(f) Necessary services and substitution of counsel. This rule does not limit a judicial officer's authority to grant a motion for necessary investigative, expert, or other services, or to appoint counsel in individual cases when substitution of counsel is required or requested. Substitution of counsel should be made as provided in (e) above.

(g) Effective Date of Rule. This rule will go into effect _____ days after its adoption by the Supreme Court.

Comment

[1] This rule does not alter judges' obligation to ensure that public defense attorneys have certified their compliance with the Supreme Court's Standards for Indigent Defense.

[2] This rule does not preclude judges from communicating information about a public defense attorney's performance to the public defense agency or administrator. Following such communication, judges shall have no role in determining what actions, if any, the public defense agency or administrator takes in response to that communication.

[3] This rule does not preclude judges from providing information on an attorney's performance, in response to requests from public defense agencies or administrators, requests from the Washington State Bar Association, and for example, requests for information made by a judicial candidate evaluation committee.

CrR 3.1
RIGHT TO AND ASSIGNMENT OF LAWYER

(a)-(c) [Unchanged.]

(d) Assignment of Lawyer.

(1)-(3) [Unchanged]

(4) Before appointing a lawyer for the indigent person, or at the first appearance of the lawyer in the case, the court shall ~~require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court~~ ensure the lawyer is in compliance with the Certification of Compliance requirement in the Supreme Court's Standards for Indigent Defense.

(e)-(f) [Unchanged.]

JuCR 9.2
ADDITIONAL RIGHT TO REPRESENTATION BY LAWYER

(a)–(c) [Unchanged.]

(d) Juvenile Offense Proceedings. The court shall provide a lawyer at public expense in a juvenile offense proceeding when required by RCW 13.40.080(10), RCW 13.40.140(2), or rule 6.2.

Before appointing a lawyer for an indigent person, or at the first appearance of the lawyer in the case, the court shall ~~require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court~~ ensure the lawyer is in compliance with the Certification of Compliance requirement in the Supreme Court’s Standards for Indigent Defense.

CrRLJ 3.1
RIGHT TO AND ASSIGNMENT OF LAWYER

(a)–(c) [Unchanged]

(d) Assignment of Lawyer.

(1)–(3) [Unchanged]

(4) Before appointing a lawyer for the indigent person, or at the first appearance of the lawyer in the case, the court shall ~~require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services to be approved by the Supreme Court~~ ensure the lawyer is in compliance with the Certification of Compliance requirement in the Supreme Court’s Standards for Indigent Defense.

(e)–(f) [Unchanged].