

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.

Comments

[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.

[Adopted effective January 1, 2023.]