

**MASON COUNTY INDIGENT DEFENSE STANDARDS
SUPERIOR AND JUVENILE COURT**

Ordinance No. 139-08

WHEREAS, the Washington Legislature mandated in RCW 10.101.030 that counties adopt standards for the delivery of public defense services;

BE IT RESOLVED that the Board of County Commissioners for Mason County hereby adopts the following Indigent Defense Standards for Superior and Juvenile Court:

STANDARD 1: CONTRACT

All indigent defense services for Superior and Juvenile Court shall be pursuant to a written contract between the indigent defense attorneys and Mason County Superior Court.

STANDARD 2: COMPENSATION

Indigent defense attorneys for Mason County Superior and Juvenile Court shall be compensated in accordance with the contract executed by the respective parties.

STANDARD 3: DUTIES AND RESPONSIBILITIES OF COUNSEL

All indigent defense contracts shall require that defense services be provided to all clients in a professional, skilled manner consistent with standards set forth by the American Bar Association (Defense Function Standards 4-1.1 et. seq.), the Rules of Professional Conduct (RPC), case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to advise the client of, and protect his/her legal rights.

STANDARD 4: CASELOAD LIMITS

The caseload of contract attorneys shall allow each attorney to give each client the time and effort necessary to ensure effective representation. Attorneys shall not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. Caseloads for each attorney shall be set and monitored by the Court and included in the contract executed by the respective parties. When setting the caseload limits, the Court shall

be mindful of the following Washington State Bar Association proposed guidelines for caseload limits per attorney, per year:

- 150 felony cases; or
- 250 juvenile offender cases; or
- 80 open juvenile dependency cases; or
- 250 civil commitments; or
- 50 RALJ appeals

STANDARD 5: MALPRACTICE INSURANCE

As part of the contract executed between the respective parties, Superior and Juvenile Court contract counsel shall at all times maintain errors and omissions liability insurance coverage as follows:

1. **Adult Contracts.** Limits of no less than \$250,000.00 per occurrence with a \$500,000.00 aggregate.
2. **Juvenile Contracts.** Limits of no less than \$100,000.00 per occurrence with a \$300,000.00 aggregate.

STANDARD 6: SERVICES OTHER THAN COUNSEL

Reasonable compensation for expert witnesses, investigators and other services necessary for an adequate preparation and presentation of the defense case shall be provided at public expense for indigent defendants. Requests for expert services shall be made through an ex parte motion.

STANDARD 7: ADMINISTRATIVE EXPENSES

Contract counsel shall be responsible for paying all administrative expenses of their office or firm or other support services not otherwise provided for in these standards or by contract.

STANDARD 8: REPORTS OF ATTORNEY ACTIVITY AND VOUCHERS

As part of the contract executed between the respective parties, Superior and Juvenile Court contract counsel shall be required to provide the Court Administrator with a monthly reporting of hours spent on the contract.

Using a search of the Scomis or other court-generated database, the Court Administrator shall conduct a monthly search of cases appointed to each adult contract attorney. The Court Administrator shall maintain a table that shows the number of new felony appointments assigned to each adult contract attorney per month.

The Court Administrator shall submit a standardized voucher form each month for payment to Superior and Juvenile Court contract counsel. Contract payments shall be made as close to the 15th of each month as

possible, if draws have been requested, and/or on the last workday of each month.

On cases for which attorneys are paid an hourly rate, attorneys shall submit a detailed statement of time and expenses incurred to the Court Administrator no later than thirty (30) days following completion of the case. Subject to the Court's finding of reasonableness, the Court Administrator will prepare and submit a voucher for payment to the Mason County Auditor.

STANDARD 9: TRAINING

Attorneys providing indigent defense services should participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their indigent defense practice.

Every attorney providing counsel to indigent accused should take the opportunity to attend courses that foster trial advocacy skills and to review professional publications and tapes.

STANDARD 10: MONITORING AND EVALUATION OF ATTORNEYS

The Court should establish a procedure for systematic monitoring and evaluation of attorney performance based upon written criteria. Efforts should include a review of time and caseload records and monitoring contract compliance.

STANDARD 11: SUBSTITUTION OF ATTORNEYS OR ASSIGNMENT OF CONTRACT

Contract attorneys should not sub-contract with another firm or attorney to provide representation and should remain directly involved in representation. All contracts are directly between the Court and the individual contract attorney, regardless of firm affiliation, which ensures that they meet minimum qualifications. The contract should address procedures for continuing representation of clients upon conclusion of the contract. Alternate or conflict counsel should be available for substitution in conflict situations.

STANDARD 12: LIMITATION ON PRIVATE PRACTICE OF CONTRACT ATTORNEYS

An attorney or firm rendering indigent defense services shall not allow his or her private practice to diminish his or her ability to represent indigent defendants.

STANDARD 13: QUALIFICATION OF ATTORNEYS

1. In order to ensure that indigent accused receive effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services must meet the following minimum professional qualifications:

- 1.1 Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and
 - 1.2 Complete the hours of continuing legal education within each calendar year required by the Washington Bar Association, to include the specialized training required in Standard 9.
2. Additional qualifications required according to severity or type of case:
- 2.1 Death Penalty Representation. Attorneys to be appointed in accordance with SPRC 2.
 - 2.2 Adult Felony Cases - Class A. Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:
 - (a) The minimum requirements set forth in Section 1 above; and
 - (b) Has served two years as a prosecutor, public defender or two years in a private criminal practice; and
 - (c) Has been trial counsel alone or with other trial counsel and handled a significant portion of trial in three (3) felony cases that have been submitted to a jury.
 - 2.3 Persistent Offender (Life Without Possibility of Release) Representation. Each attorney acting as lead counsel in a "two-strikes" or "three strikes" case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:
 - (a) The minimum requirements set forth in Section 1 above, and
 - (b) Have at least:
 - (i) Four years criminal trial experience; and
 - (ii) One year experience as a felony defense attorney; and
 - (iii) Experience as lead counsel in at least one Class A felony trial; and
 - (iv) Experience as counsel in cases involving each of

the following:

- 1) Mental health issues; and
- 2) Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
- 3) Expert witnesses; and
- 4) One year of appellate experience or demonstrated legal writing ability.

- 2.4 Adult Felony Cases - All other Felonies. Each attorney representing a defendant accused of a Class B or C felony shall meet the following requirements:
- (a) The minimum requirements set forth in Section 1 above; and
 - (b) Has served one year as a prosecutor, appointed counsel for indigent defendants, or in a private criminal practice; and
 - (c) Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.
- 2.5 Adult Drug Court or Probation Revocation. Each attorney representing a defendant in Drug Court or involved in a probation / community supervision revocation shall meet the minimum requirements set forth in Section 1 above.
- 2.6 Misdemeanor Cases. Each attorney representing an adult defendant accused of a gross misdemeanor or misdemeanor in Superior Court shall meet the minimum requirements set forth in Section 1 above.
- 2.7 Juvenile Offender Cases. Each attorney representing a juvenile accused shall meet the minimum requirements set forth in Section 1 above.
- 2.8 Mental Commitment Hearings. Each attorney representing an individual involved in a mental commitment hearing shall meet the minimum requirements set forth in Section 1 above.
- 2.9 Dependency Cases. Contracts that provide representation for parents in a dependency proceedings are currently

assigned through the Office of Public Defense. Each attorney appointed for a child or the guardian ad litem on an hourly basis in a dependency matter shall meet the minimum requirements set forth in Section 1 above.

- 2.10 RALJ Appeals to Superior Court. Each attorney representing a case on a RALJ appeal shall meet the minimum requirements set forth in Section 1 above and demonstrate legal writing ability.

STANDARD 14: DISPOSITION OF CLIENT COMPLAINTS

Complaints should first be directed to the attorney, firm or agency, which provided representation. If the client feels that he or she has not received an adequate response, the Court should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. The complaining client should be informed as to the disposition of his or her complaint within one week.

STANDARD 15: CAUSE FOR TERMINATION OR REMOVAL OF ATTORNEY

Contracts for defense services may be terminated as follows:

1. Immediate termination should the attorney become disbarred or their license to practice law in the State of Washington suspended; or
2. By the Court upon thirty (30) days written notification to the attorneys; or
3. By the attorney upon sixty (60) days written notification to the Court; provided, however, that except if terminated under subsection (a) above the attorney shall be required to complete the cases already assigned to him or her in accordance with the contract.

STANDARD 16: NON-DISCRIMINATION

Neither the Court, in its selection of an attorney, firm or agency to provide indigent defense representation of clients, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or handicap. Both the Court and contract counsel shall comply with all federal, state and non-discrimination requirements.

STANDARD 17: GUIDELINES FOR AWARDED DEFENSE CONTRACTS

The Court shall award contracts for indigent defense services only after determining that the attorney can meet accepted professional standards. Under no circumstances shall a contract be awarded on the

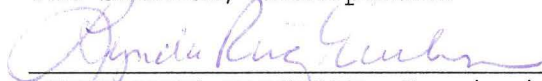
basis of cost alone. Attorneys applying for contracts must demonstrate their ability to meet these standards. Neither prosecutors nor law enforcement officers shall be involved in the selection of attorneys who will provide indigent defense services.

ADOPTED this 23rd day of December, 2008.

BOARD OF COUNTY COMMISSIONERS
FOR MASON COUNTY, WASHINGTON



TIM SHELDON, Chairperson

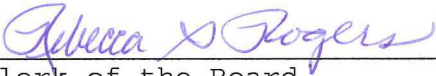


LYNDA RING ERICKSON, Commissioner



ROSS GALLAGHER, Chairperson

ATTEST:



Clerk of the Board