

RESOLUTION / ORDINANCE

A RESOLUTION / ORDINANCE OF THE CITY OF _____,
WASHINGTON ADOPTING STANDARDS FOR THE
DELIVERY OF PUBLIC DEFENDER SERVICES PURSUANT
TO RCW 10.101.030 [FOR ORDINANCES ONLY: AND
FIXING A TIME WHEN THE SAME SHALL BECOME
EFFECTIVE.]

WHEREAS, RCW 10.101.030 requires the City of _____ (“City”) to
adopt standards for the delivery of Public Defense Services; and

WHEREAS, the Washington State Bar Association has promulgated standards last
revised in 2011 which state the objective of the promulgated standards as:

The objective of these guidelines is to alert the attorney to the
course of action that may be necessary, advisable, or appropriate,
and thereby assist the attorney in deciding upon the particular
actions that must be taken in a case to assure that the client
receives the best representation possible;

WHEREAS, the Washington Supreme Court by Order No. 25700-A-1004, as amended,
has adopted new standards for indigent defense and a certificate of compliance; and

WHEREAS, such standards, with the exception of Standard 3.4, will become effective
October 1, 2012; and

WHEREAS, new Standard 3.4 relating to case load limits and methodology will become
effective on September 1, 2013; NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF _____, WASHINGTON, DO
ORDAIN AS FOLLOWS:

THE CITY COUNCIL OF THE CITY OF _____, WASHINGTON, HEREBY
RESOLVES AS FOLLOWS:

STATEMENT OF INTENT AND INTERPRETATION: These standards are adopted in order to comply with the requirements of Washington Statute and the rules established by the Washington State Supreme Court. The provisions of these standards shall be broadly and liberally construed to achieve their stated purpose, which is to provide standards which afford “quality representation” in the provision of public defense to indigent criminal defendants. “Quality representation” describes the minimum level of attention, care, and skill that Washington citizens would expect of their State’s criminal justice system. These standards may be amended from time to time to reflect changes in the rules established by the Washington State Supreme Court, guidance offered by the Washington State Bar Association, or interpretations of the rules and standards by the Washington courts.

1. DUTIES AND RESPONSIBILITIES.

1.1 Public Defense Services shall be provided to all clients in a professional, skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender’s primary and most fundamental responsibility is to promote and protect the interests of the client.

1.2 Public Defense shall be provided to indigent clients whose eligibility has been determined by _____ Department of Assigned Counsel/court appointment].

1.3 All Public Defenders providing services by contract shall quarterly certify their compliance with the standards for indigent defense by filing a Certification of Compliance

as required by CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Such forms shall be filed with the _____ [insert name of court].

1.4 Non-Discrimination. The Public Defender shall comply with all federal, state and local non-discrimination laws or ordinances. The duty of non-discrimination relates not only to the provision of services by the Public Defender to the clients, but also with respect to the hiring and employment practices of the Public Defender Contractor.

2. QUALIFICATIONS AND TRAINING.

2.1 Every Public Defender performing services under contract with the City shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State. **[Interns may assist in the provision of services so long as such interns comply with APR 9, and are trained and supervised by contract Public Defenders. optional]**

2.2 Public Defenders **[and interns]** performing services under contract shall:

2.2.1 be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area; and

2.2.2 be familiar with the Washington Rules of Professional Conduct (WRPC); and

2.2.3 be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and

2.2.4 be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and

2.2.5 be familiar with mental health issues and be able to identify the need to obtain expert services; and

2.2.6 complete seven (7) hours of continuing legal education within each calendar year and courses related to public defense practice.

2.3 The City Attorney, City Prosecutor, Chief of Police and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services.

2.4 **[Required depending on size of contract.]** In addition to required continuing legal education (CLE) training, in the event that seven (7) or more attorneys perform services to the cities by contract, the contract for services shall provide for in-house training. Proposals made in pursuit of a contract for Public Defense shall provide information regarding in-house training, the development of manuals to inform new attorneys of the rules and procedures of the _____ Court and encourage the opportunity to attend courses that foster trial advocacy skills. The Public Defender is encouraged to obtain and review professional publications and other media relating to criminal defense.

3. ADMINISTRATION, SUPPORT SERVICES AND INFRASTRUCTURE.

3.1 Contracts for services and proposals submitted in pursuit of such contracts shall provide for or include adequate administrative support, including but not limited to:

3.1.1 Travel, telephones, law library and/or electronic research capabilities, financial accounting, case management systems, computers, word processing equipment and software, office space and supplies. Proposals for contracts shall be evaluated to address the training of attorneys and staff (see Section 2 above) and provide for adequate staffing and other costs associated with the day to day management of a law office.

3.1.2 Private offices and/or conference rooms shall be available which allow the maintenance of confidentiality. A telephone system, internet access and postal address shall be provided by Public Defender.

3.2 Contracts for and proposals to contract shall provide for adequate staffing. An adequate staff includes provision for legal assistance, accounting services, case management services and/or programs, and access, when needed, to the services of a social worker, mental health professional and translating services.

4. EVALUATION AND MONITORING.

4.1 Contracts and proposals to contract with the City for Public Defense Services shall include provision for case reporting systems and information management systems. Such systems shall have the capability to provide monthly reports to the City and to the Office of Court Administration regarding the caseloads generated under the contract for each attorney **[and intern]** providing services under the contract.

4.2 Complaints.

4.2.1 The City/Mayor/City Manager/City Administrator shall designate a contact point for complaints regarding the provision of services by the Public Defender.

4.2.2 Public Defender Service Providers shall first be afforded an opportunity to resolve any complaint.

4.2.3 Complaints regarding the provision of services under the contract, or regarding a violation of any of these standards shall be investigated by the **[insert staff contact]** provided, however, that any complaint regarding trial strategy or any other matter which could breach confidentiality shall be referred to the Washington State Bar Association or the presiding judge of the _____ Court. Nothing in this section or in these standards should

be interpreted to require the Public Defender or any indigent defendant to breach any duty of confidentiality, including, but not limited to trial strategy.

5. CASELOAD LIMITS.

5.1 The caseload of the Public Defender shall consist of misdemeanors and RALJ appeals to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation.

5.2 Alternative 1. No Public Defender performing services by contract shall exceed four hundred (400) cases in any calendar period. Contracts for Services shall prohibit the Public Defender from performing services under any other similar contract which, taken in conjunction with the services to be performed under the contract, would exceed the case count in any calendar year. The case count for a Public Defender who maintains a private practice shall be adjusted to reflect the relative percentage which criminal defense relates to the Public Defender's total practice. For example, an attorney whose practice consists of fifty percent (50%) services provided under contract to the City (adjusted for any other Public Defense Services performed for another entity) and fifty percent (50%) private practice, the total case count for such an attorney shall not exceed two hundred (200) cases.

5.2 Alternative 2. The caseload for the Public Defender shall not exceed three hundred (300) cases per year, determined in accordance with the case count methodology established below.

5.2.1 A case credit is a unit of work computed as follows:

5.2.1.1 The Public Defender will receive no credit for a misdemeanor case when the court dismisses the case upon the motion of the prosecuting attorney

before any legal service has been performed. Any case in which the Public Defender's duty is limited to explaining to the individual defendant the implication of any action by the City Attorney to reduce a criminal matter to a civil infraction, bail forfeiture or dismissal, shall not be counted as a case assignment to the Public Defender's office. The Public Defender shall receive no work for credit on cases which are substantively identified as conflicts, with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the court, or for other extraordinary circumstances approved by the City, including but not limited to, information or evidence which the Public Defender could not have reasonably known or discovered at the time of the initial conflicts check.

5.2.1.2 Each pre-trial case is counted only once, irrespective of any subsequent reappointment pursuant to when a client fails to appear (FTA). The case will be counted at the time of first appointment. The case is where a defendant was previously represented by a Public Defender that were previously counted when they are in pre-trial status, will not be counted again unless the defendant FTA's at a post-conviction hearing. Post-conviction cases where defendants FTA and are subsequently reappointed to the Public Defender will be counted again; however, this will occur only once, no matter how many times a defendant FTA's and the Public Defender is reappointed when the case is in post-conviction status, the case will be counted only once.

5.2.2 A distinction exists in types of misdemeanors which may require different time and effort to ensure different effective representation. Court administrative procedures and jurisdictional policies are in place for certain simple misdemeanors such as bail forfeitures, post and forfeiture stipulations, and civil compromises for offenders of certain

misdemeanors that permit a Public Defender to handle more misdemeanor cases. Therefore, the following units of credit shall be considered when determining case credit workload standards:

5.2.3 Cases in which there is a resolution, which results in a disposition other than those specifically mentioned above, but which does not require the Public Defender to file or respond to any motions in the matter or appear at trial shall be billed as one-third (1/3) case credits.

5.2.4 All other misdemeanors shall be one (1) case credit, unless a motion is filed or the matter is taken to trial, in which case it shall be counted as two (2) case credits.

5.2.5 A criminal matter shall be defined as one (1) case for billing purposes no matter how many charges are filed against the individual, so long as all the charges arise out of the same incident. Any additional charges filed against the same defendant, arising out of a separate incident, shall be counted by the Public Defender as a new case.

5.3 **[optional]** The caseload limit for approved interns shall be twenty-five percent (25%) of those established by these policies.

5.4 The request for qualifications process for selection of a Public Defender and Public Defender Counsel shall strive to obtain a Public Defender whose experience and training is sufficient to comport with the caseload assumptions and credits assigned. Attorneys assigned to RALJ appeals shall have a minimum of one year's experience in RALJ appeals or in the event multiple attorneys perform services in the contract, a minimum of one attorney assigned to or supervising RALJ appeals shall have such experience.

5.5 The standards provided herein for caseloads may be adjusted up or down depending upon the complexity of any particular case. A Public Defender may request to have

the weighting for an unusually complex case not addressed adequately by these standards may be increased depending upon the complexity and requirements of the case, and such adjustment shall not be unreasonably refused by the City. The maximum caseload for a particular attorney shall be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

5.6 If a Public Defender or assigned counsel is carrying a caseload consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed caseload of felonies and misdemeanors, these standards shall be adjusted proportionally to determine a full caseload. If the contract or assigned counsel also maintains a private law practice, the caseload shall be based upon the percentage of time that the lawyer devotes to public defense with the City.

5.7 The monthly reports to be provided by the Public Defender shall identify the number of cases assigned, the case count year-to-date, and cases which the Public Defender has been assigned a higher case count.

6. COMPENSATION. The City of _____ is a public agency whose revenues and resources are limited by statute, the constitution, and our local economy. The City has an obligation to obtain the quality representation to indigent defendants at a reasonable price that takes into consideration the resources of the City, and the needs of its citizens. Within those inherent limitations, the Public Defense Services afforded by contract shall ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience. For conflict and other assigned counsel, reasonable compensation shall also be

provided. In each case, compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned caseload. Due to the limited jurisdiction of the municipal/district court, misdemeanors and RALJ misdemeanor appeals pursuant to Superior Court constitute the assigned caseload under contract. Contracted and assigned counsel shall be compensated for reasonable out of pocket expenses.

6.1 The contract shall provide for extraordinary compensation in the event that a particular case requires an extraordinary amount of time and preparation. The conditions under extraordinary fees may be charged will be defined within any contract.

6.2 Attorneys with a conflict of interest shall not be required to compensate the new, substituted attorney under the contract. Such arrangements are prohibited by ethical considerations.

6.3 Among the reasonable expenses to be covered by the contract include expert witnesses, investigative costs, and the administrative overhead costs of paraprofessionals, including, as needed, mental health professionals, social workers, and translators.

6.4 The City's contract with assigned or Conflict Counsel may provide for payment by voucher. Assigned or Conflict Counsel shall be paid by the case upon completion. Contract counsel shall be paid monthly without regard to the number of cases closed based upon the contract's estimation of cases to be assigned during any calendar period. In the event that the case limits are exceeded, the contract shall provide for additional compensation to the contractor, including but not limited to the additional cases assigned as well as any impact which the additional case assignments may have upon administrative and attorney overhead of the Public Defender. For example, if the assignment of additional cases requires the Public Defender to add staff or increase training, administrative and other overhead charges, the City and Public

Defender shall enter into negotiation to provide for reasonable compensation that assures the provision of quality representation to indigent defendants.

7. EXPERTS, INVESTIGATION, AND OTHER COSTS.

7.1 Public Defense Contract shall provide reasonable compensation for an expert of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City officials.

7.2 The services of expert witnesses will be provided under contract when approved by the Court through ex parte motion. The expert will be paid directly by the City.

7.3 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Normally, a ratio of one investigator to four attorneys shall be provided. Contracts for Public Defense Services shall include investigative services as a part of reimbursed overhead.

8. TERMINATION AND REMOVAL.

8.1 Termination of the contract shall occur only for "good cause." Good cause shall include the failure of the contract Public Defender to render adequate representation to clients, the willful disregard of the rights and best interests of the client, and the willful disregard of these standards. Termination may also occur for violation of the express terms of the contract, and these standards, provided, however, that the Public Defender shall be provided reasonable opportunity, following notice, to cure any technical contract violations that do not impair the provision of quality representation to the indigent client.

8.2 Removal by the Court of counsel from representation normally should not occur over the objection of the attorney and the client.

9. **SUBSTITUTION CONFLICT COUNSEL.**

9.1 The selection process for a Public Defender shall be by review of names and experience levels of the attorneys who will actually provide services, to ensure that they meet minimum qualifications. The contract shall prohibit sub-contracting without the express written consent of the City. The City will endeavor to contract directly with the service providers.

9.2 In the event of conflict or removal of the Public Defender, Conflict Counsel shall be available, either through a joint contract with the Public Defender and Conflict Counsel, by separate contract with Conflict Counsel or by court appointment. In the event that alternative or Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of alternative or sub-Conflict Counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.

9.3 Conflict Counsel shall adhere to the standards established by this **[resolution/ordinance]**, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this agreement.

9.4 Conflict Counsel may be assigned:

9.4.1 by the _____ Court upon the request of the Public Defender;

9.4.2 in accordance with the terms of a joint contract with the Public Defender and Conflict Counsel, or

9.4.3 pursuant to a separate contract.

10. SUPERVISION, MONITORING AND EVALUATION OF ATTORNEYS.

Candidates for Public Defender services are encouraged, but not required, to comply with the provisions of Standard 10 and 11 as established by the Washington Bar Association, Standards for Indigent Defense Services, approved June 3, 2011. The City recognizes that smaller firms providing Public Defense Services may provide quality service through experienced practitioners. Wherever possible, larger contracting agencies should make provision for supervision, monitoring and evaluation in accordance with Bar Association standards or provide alternative methods for the supervision, monitoring and evaluation of attorneys which achieve substantially the same goals shall be given for effective supervision, monitoring and evaluation.

11. UPDATE AND EVALUATION.

As the rules established by the Washington State Supreme Court are applied and interpreted by the courts and, when appropriate, the Bar Association and other administrative agencies, the City states its intent to review and modify these standards.

Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____

SUMMARY OF ORDINANCE NO. _____

of the City of _____, Washington

On the ____ day of _____, 2012, the City Council of the City of _____, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

The full text of this Ordinance will be mailed upon request.

DATED this ____ day of _____, 2012.

CITY CLERK,