

**CITY OF BREMERTON
CITY CLERK**

REQUEST FOR PROPOSALS FOR ON CALL CONFLICT PUBLIC DEFENDER SERVICES ROSTER

Proposals marked "2023 RFP Conflict Public Defender On-Call Roster Pool" must be received by
5:00 PM on Friday, April 28th, 2023:

Melinda Monroe

Contracts Administrator

City of Bremerton
345 6th Street, Suite 100
Bremerton, WA 98337

Any proposals received after the scheduled closing time for receipt will be rejected. As multiple awards are anticipated from this RFP, awards may be made prior to the close of the RFP. Qualified proposers are encouraged to submit as soon as possible.

The point of contact for this project is Melinda Monroe at Melinda.monroe@ci.bremerton.wa.us or (360) 473-5306.

The full text of the RFP is posted on the City website at <http://www.bremertonwa.gov/Bids.aspx> and hard copies can be obtained from the City of Bremerton, Contract Administrator's Office.

**2023 CITY OF BREMERTON
REQUEST FOR PROPOSAL**

ON-CALL CONFLICT PUBLIC DEFENSE ATTORNEY SERVICES

I. PURPOSE OF REQUEST.

The City of Bremerton (“City”) is seeking proposals from attorneys and firms that can provide effective counsel to indigent defendants charged with misdemeanor or gross misdemeanor crimes in City of Bremerton Municipal Court. From the submissions, the City will compile a pool of Conflict Public Defenders to provide legal defense services to indigent defendants whenever the Public Defender has a conflict. The City invites interested attorneys or firms with criminal court experience to provide Conflict Public Defense Attorney services. The City’s needs are outlined in the following Request for Proposal (“RFP”). The City expects multiple awards from this RFP and may award to qualified respondents prior to the closing date.

II. TIME SCHEDULE.

The On-call Conflict Public Defender Attorney Pool is an open roster and submission and questions may both be submitted at any time up to April 28th, 2023 at 5 pm (PST). The City anticipates using the roster immediately and issuing multiple awards. For this reason, the City encourages qualified proposers to submit as soon as possible.

III. INSTRUCTIONS TO PROPOSERS.

A. All proposals should be sent to:

Melinda Monroe
Contracts Administrator
City of Bremerton
345 6th Street, STE 100
Bremerton, WA 98337
(360) 473-5306
Melinda.monroe@ci.bremerton.wa.us

B. All proposals must be in a zipped file via email with the subject line titled: “RFP On-Call Conflict Public Defender” or sent via a sealed envelope and clearly marked in the lower left-hand corner: “RFP On-Call Conflict Public Defender Roster Pool”

C. If an individual attorney or firm desires to be considered for services, please submit at least one (1) emailed copy and/or the proposer may submit two (2) hard copies of the proposal. No faxed or telephone proposals will be accepted.

D. Proposals should be prepared simply and economically, providing a

**2023 CITY OF BREMERTON
REQUEST FOR PROPOSAL**

straightforward, concise description of provider capabilities to satisfy the requirements of the request. Special bindings, colored displays, promotional materials, etc. are not desired. Emphasis should be on completeness and clarity of content. Use of recycled paper for requests and any printed or photocopied material created pursuant to a contract with the City is desirable whenever practicable. Use of both sides of paper sheets for any submittals to the City is desirable whenever practicable.

E. All proposals must include the following information:

- The names and Washington State Bar Numbers of individuals who will be providing public defense services, and their areas of responsibility;
- Specific experience of individuals relative to the proposal;
- Disclosure of any litigation or judgments rendered against the attorney or firm in any matter relating to professional activities of the attorney or firm, including any pending or founded complaints to the Washington State Bar Association;
- Days and hours of availability; and
- References. At least 1 municipal reference is preferred and you may provide up to 3 references.

IV. SELECTION CRITERIA.

Factor

1. Proposal responsiveness, may include interview.
2. Availability to accommodate calendar and other requirements (preference for location in Bremerton).
3. Ability and experience performing services of this type.
4. Proof of ability to meet required insurance and contractor standards as enclosed in Exhibit A. Specifically the following:
 - Either: has served one year as a prosecutor; or has served one year as a public defender; or one year in a private criminal practice; and
 - 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

**2023 CITY OF BREMERTON
REQUEST FOR PROPOSAL**

submitted to a jury;

Each proposal will be independently evaluated on factors 1 through 4.

V. TERMS AND CONDITIONS.

- A. The City reserves the right to reject any and all proposals, and to waive minor irregularities in any proposal.
- B. The City reserves the right to request clarification of information submitted, and to request additional information from any proposer.
- C. The City reserves the right to award a contract to any qualified attorney or firm. The proposed contract with Exhibits is attached as Exhibit “A” (a.k.a. Professional Services Agreement for Conflict Public Defense Standards). Response to this Request for Proposal is confirmation that your firm can meet the requirements as requested per the entirety of this Request for Proposal. The contract resulting from acceptance of a proposal by the city shall be in a form supplied or approved by the City, and shall reflect the specifications in this RFP. A copy of the contract is available for review and shall include requirements to comply with ADA, Civil Rights Act, and EEO requirements. The City reserves the right to reject any proposed agreement or contract that does not conform to the specifications contained in this RFP, and which is not approved by the City Attorney’s office.
- D. The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.
- E. The City shall not be responsible for any costs incurred by the firm in preparing, submitting or presenting its response to the RFP.

VI. BACKGROUND.

City of Bremerton is responsible for providing indigent defense services to persons charged with misdemeanor and gross misdemeanor crimes who meet certain financial eligibility criteria. Bremerton currently contracts with one law

**2023 CITY OF BREMERTON
REQUEST FOR PROPOSAL**

firm (Public Defender) to provide public defense services, and multiple law firms to provide the public defense services when the Public Defender is determined to have a conflict. This RFP seeks attorneys or firms to form a Conflict Public Defender Attorney Pool that will handle cases where the Public Defender and the Primary Public Defender has a conflict.

The Conflict Public Defender Attorney Pool is a pool of attorneys or firms interested in providing legal defense services to indigent defendants who cannot be represented by any one of the contracted public defenders due to a legal conflict of interest. Inclusion in the pool is not a guarantee of employment. Cases will be assigned on an individual basis.

VII. SCOPE OF SERVICES.

General Description: The successful bidders will provide legal representation in compliance with Chapter 10.101 RCW, the Washington Supreme Court Orders on Public Defense Standards, the City’s case weighting system, and the Rules of Professional Conduct to indigent defendants charged with misdemeanor and gross misdemeanor crimes in Bremerton Municipal Court in the event the Public Defender has a legal conflict.

For a full detail description of Services requested, refer to Professional Services Agreement, Exhibit “A” attached thereto.

VIII. COMPENSATION.

In consideration of the Contractor performing the Services, the City agrees to pay the Contractor calculated on the basis of the following fees: The City shall pay Contractor the sum of Three Hundred and 00/100 Dollars (\$300.00) per case assigned, except cases only involving probation review or appeal. “Case,” as defined in Exhibit “A,” Section 1, for which the Contractor is appointed and files a notice of appearance constitutes one “case,” regardless of any subsequent withdrawal and reappointment; except that cases appeared on and then withdrawn from because of a further conflict or because a defendant is not indigent are not considered cases. Except for such additional fees set forth specifically below, this fee shall constitute the total compensation payable by the City for all public defender services provided while Contractor is responsible for the case.

In addition to the \$300.00 per case assigned, the City shall pay Contractor Three Hundred and 00/100 Dollars (\$300.00) for each case that proceeds to jury trial and is actually submitted to a jury for deliberation. For cases that have been assigned to the Contractor for probation review where the Contractor has not previously been assigned to the case, the City shall pay the Contractor Sixty-Two and 50/100 Dollars (\$62.50) per case. The City shall pay an extra Fifty and

**2023 CITY OF BREMERTON
REQUEST FOR PROPOSAL**

00/Dollars (\$50.00) at the resolution of the first case assigned for the year if the Contractor has not been a vendor with the City previously. The annual reimbursement shall not exceed \$60,000.

Reimbursable Expenses. Incidental expenses that are reasonable, customary, and actual and that are incurred by Contractor in performing non-routine portions of the Services, such as transcription costs and other reasonable costs, shall be compensated according to invoices; provided, however, that such costs shall be deemed reasonable in the City's sole discretion or as necessary to provide effective legal representation as ordered by the court in a reasonable amount, and shall not exceed Two Thousand and no/100 Dollars (\$2,000) per year. Such non-routine portions of the Services do not include the costs of case preparation, tracking, case analysis, client interviews, legal research, briefing, basic investigation, filing, court appearances, document preparation or processing, court appearances, case negotiations, administration, or similar services normally related to legal representation. The City shall reimburse the Contractor for reasonable expert witness or investigator fees necessary to provide effective legal representation at a reasonable market rate where the court orders such expert or investigator to be employed upon motion of the Contractor.

IX. COMMUNICATIONS WITH THE CITY OF BREMERTON.

All questions related to this RFP must be directed to:

Melinda Monroe, Contracts Administrator
City of Bremerton
Melinda.monroe@ci.bremerton.wa.us
(360) 473-5306

All questions and their answers regarding this proposal will be documented and made available to other applications.

X. PUBLICATION.

Name of Publication:	Open Dates:
City of Bremerton Website http://www.bremertonwa.gov/bids.aspx	December 21st, 2022 to April 28 th , 2023

**PROFESSIONAL SERVICES AGREEMENT
FOR ON-CALL CONFLICT PUBLIC DEFENSE SERVICES ROSTER**

This Professional Services Agreement ("Agreement "), for legal representation on _____ brought forth against the Defendant, made and entered into this ___ day of ____, 2023, by and between the CITY, a Washington municipal corporation ("City"), and XXX ("Contractor"). The City and Contractor (together "Parties") are located and do business at the below addresses which shall be valid for any notice required under this Agreement:

CONTRACTOR:	CITY

The Parties agree as follows:

1. DEFINITIONS.

- A. Attorney. Attorney shall mean attorneys working for XXX, and where appropriate shall include Rule 9 interns.
- B. Case. A Case shall mean the filing of a document with the court naming a person as defendant or respondent, to which the Contractor is appointed as Attorney in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident shall be counted as one case. Cases reassigned to a conflict public defender or cases in which a defendant hires a private attorney for representation shall not be counted as a case.
- C. Contractor. Contractor shall mean XXX and shall mean each attorney working for the Contractor when approved by the City.
- D. Defendant. Defendant shall mean a person charged with a misdemeanor or gross misdemeanor offense that is filed into the CITY COURT, and for whom the Contractor must provide services pursuant to Section III of this Agreement.

2. TERM. The term of this agreement shall be from _____ to December 31, 2023 unless terminated or extended. The contract may be extended for additional consecutive one (1) year terms at the mutual agreement of the parties, not to exceed a total of 3 years. In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of the City of Bremerton.

3. SERVICES. The Contractor shall perform the services more specifically described in Attachment "A", attached hereto, and incorporated by this reference ("Services"), in a manner consistent with the accepted professional practices for other similar services within Washington State in effect at the time those services are performed, and performed to the City's satisfaction. In addition to the other warranties contained in Services the Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and

governmental entities. Services shall begin immediately upon the effective date of this Agreement. Services shall be subject, at all times, to inspection by and approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Services in accordance with this Agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality, or ease of its discovery.

- A. Personnel. The contractor shall have and maintain complete responsibility for its Personnel. "Personnel" means Contractor and Contractor's employees, subcontractors, volunteers, interns, agents, and any other person utilized by the Contractor directly or indirectly or through third parties to performing any Services under this Contract. The Contractor shall promptly remove any Personnel performing Services on request from the City representative.
- B. Standards. The Contractor warrants that i) Contractor has the qualifications, knowledge, experience, skills and resources necessary to provide all Services; ii) all Services shall be provided by Personnel experienced in their respective fields and in a manner consistent with the standards of care, skill, diligence and knowledge commonly possessed and exercised by experience professionals in the same discipline in the same or similar circumstances; and iii) all Services shall be performed to the City's reasonable satisfaction and according to the schedule agreed upon by the parties. The Contractor agrees to the most current standards required by CrR 3.1/CrRLJ 3.1/ JuCR 9.2/MPR 2.1 and included in this agreement as Attachment D.

4. **TERMINATION**. The City may terminate this Agreement immediately if the Contractor fails to maintain required insurance policies, breaches confidentiality or materially violates Section 13; and such may result in ineligibility for further City agreements.

For Cause. This agreement may be terminated for good cause for violation of any material term of this agreement. "Material term" shall include any violation indicating a failure to provide representation in accordance with the rules of court, the ethical obligations established by the Washington State Bar Association, the willful disregard of the rights and best interests of the client, a willful violation of the Standards for Indigent Defense as adopted by the Washington State Supreme Court (hereinafter the "Standards") or the Wilbur, et al v. Mt. Vernon, et al (hereinafter the "Decision"), the provisions of Section 7 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Attorney or any Contractor providing service under this agreement has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of contract violation shall be provided to the Contractor who shall have thirty (30) business days to cure the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion. In lieu of terminating this contract, the City may agree in writing to alternative corrective measures.

Without Cause. Either party may terminate this Agreement at any time without cause upon giving the non-terminating party not less than one hundred twenty (120) days prior written notice. The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed to in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party.

Obligations survive Termination. In the event of termination of this agreement, the following obligations shall survive and continue:

Representation. The compensation established in this agreement compensates the Contractor for services relating to each and every assigned case. Therefore, in the event this agreement is terminated, the Contractor will continue to represent clients on previously assigned cases until a case is concluded at the trial court level or the defendant fails to appear and a warrant issues. For the purposes of this contract the term "concluded" is defined as "the Court has accepted a proposed resolution, including

the entry of a plea, diversion agreement (PDA), stipulated order of continuance (SOC), veteran's court, deferred prosecution, and specifically excluding post-resolution status."

For those matters set for trial within sixty (60) calendar days of the final Agreement date, through trial of the failure of the defendant to appear (FTA) for trial, or

For all other matters, for a period of thirty (30) days, provided, however, that if the defendant fails to appear (FTA) for a court appearance, the Contractor may seek to withdraw following the FTA.

The provisions of Attachment "A" and sections 6 and 7 below, as well as this subsection 4.3 (Obligations survive Termination) survive termination as to the Contractor. The City shall remain bound by the provisions of section 3 of Attachment "B" with respect to additional costs incurred with respect to cases concluded after the termination of this contract.

If the public defender, in his/her/their discretion, deems it in the client's best interest to appeal, the appeal shall be treated as a separate case for an additional payment under Attachment A. Continued representation of a client in post-conviction or other proceedings before the court relating to the initial charges but following conclusion at the trial court level shall also be treated as a separate case and subject to an additional payment in accordance with Attachment B.

5. COMPENSATION.

Amount. The total compensation to be paid to the Contractor shall be included in Attachment B. The maximum amount of compensation paid under the Contract by the City shall not exceed Sixty Thousand Dollars, (\$60,000.00). These fees include all labor, materials and expenses required for the completion of these services. Except as otherwise provided in Attachment "B", the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

Payment. Payment to the Contractor by the City in accordance with the above shall be the total compensation for all work performed under this agreement and supporting documents hereto as well as all subcontractor's fees and expenses, supervision, labor supplies, materials, equipment or the use thereof, reimbursable expenses, and other necessary incidentals. If the Services do not meet the requirements of this Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement. The Contractor shall be paid based on the proposed compensation. Unless otherwise specified in this Agreement, any payment shall be considered timely if a check is mailed or is available within 30 days of the date of actual receipt by the City of an invoice conforming in all respects to the terms of this agreement.

6. CHANGES.

This contract may be renegotiated at the option of either party if the Washington State Supreme Court, the Washington Bar Association or the City significantly modifies the Standards for Indigent Defense adopted pursuant to the Court rule or City Ordinance/Resolution. All changes must be in writing and agreed upon by both parties.

7. INDEMNIFICATION.

A. Vendor shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this Agreement except for that portion of the injuries and damages caused by the City's sole negligence, unless Vendor is conducting work pursuant to Subsection B below.

Exhibit "A"

The City's review or acceptance of any of the work when completed shall not be grounds to avoid any of these covenants of indemnification.

B. Architects, Engineers and Any Other Professional Listed In and Performing Services Defined in RCW 4.24.115. Should a court of competent jurisdiction determine that Vendor's services provided pursuant to this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Vendor and the City, its officers, officials, employees, agents and volunteers, the Vendor's liability hereunder shall be only to the extent of the Vendor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE VENDOR'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Agreement.

8. INSURANCE. The Vendor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, employees, sub-Vendors or sub-contractors.

Before beginning work on the project described in this Agreement, the Vendor shall provide a Certificate of Insurance evidencing:

1. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and general aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and
3. Excess Liability insurance with limits not less than \$1,000,000 limit per occurrence and aggregate; and
4. Professional Liability insurance with limits no less than \$1,000,000 limit per occurrence/claim; and
5. Workers Compensation insurance as statutorily required by the Industrial Insurance Act of the State of Washington, Title 51, Revised Code of Washington and employer's liability with limits not less than \$1,000,000.

Any payment of deductible or self-insured retention shall be the sole responsibility of the Vendor.

All required policies shall be provided on an "occurrence" basis except professional liability insurance (if required), which may be provided on a "claims-made" basis.

The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Vendor and a copy of an endorsement that is acceptable to the City, which names the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies and endorsements. The City further reserves the right to reject any unacceptable policies and/or endorsements.

The Vendor's Commercial General Liability insurance shall contain a clause stating that coverage shall

apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

The Vendor's insurance shall be primary and non-contributory insurance as respects the City and shall contain a waiver of subrogation against the City for claims arising out of any operations, liabilities and obligations to which coverage applies. It shall be an affirmative obligation upon Vendor to advise the City's Risk Manager by fax at (360) 473-5161, or by certified mail, return receipt requested to City of Bremerton, Attn: Risk Management, 345 6th Street, Suite 100, Bremerton, WA 98337 within two days of the cancellation, suspension or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement.

The City also reserves its unqualified right to require at any time and for any reason, proof of coverage in the form of a duplicate of the insurance policy with all endorsements as evidence of coverage.

In the event that the Vendor employs other Vendors or contractors (sub-Vendors or sub-contractors) as part of the work covered by this Agreement, it shall be the Vendor's responsibility to require and confirm that each sub-Vendor or sub-contractor meets the minimum insurance requirements specified above. The Vendor shall, upon demand of the City, deliver to the City copies of such policy or policies of insurance and the receipts for payment of premiums thereon.

8. CONFIDENTIALITY. All records submitted by the City to the Contractor will be appropriately safeguarded by the Contractor. Client documents, work product, and other client confidences and communications shall be maintained by the Contractor in accordance with the Attorney Client Privilege. The Contractor will fully cooperate with the City in identifying, assembling, and providing records in case of any public records disclosure request to the extent permitted by the Attorney Client Privilege.

9. INDEPENDENT CONTRACTOR. The Parties intend that the Contractor shall be an independent contractor and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. The City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work. The Contractor shall pay all income and other taxes due except as specifically provided in Section 5. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. If the Contractor is a sole proprietorship or if this Agreement is with an individual, the Contractor agrees to notify the City and complete any required form if the Contractor retired under a State of Washington retirement system and agrees to indemnify any losses the City may sustain through the Contractor's failure to do so.

10. CONFLICT OF INTEREST. It is recognized that Contractor may or will be performing professional services during the Term for other parties; however, such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City. Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor's selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

11. EQUAL OPPORTUNITY EMPLOYER. In the hiring of employees for the performance of work under this Agreement, the Vendor, its subcontractors, or any person acting on behalf of Vendor shall not

discriminate in any employment practice on the basis of age (40+), sex, race, creed, color, national origin, sexual orientation/gender identity, marital status, military status, or the presence of any physical, mental or sensory disability.

12. ADA STATEMENT. The City of Bremerton does not discriminate on the basis of disability in programs and activities, which it operates pursuant to the requirements of the Americans with Disabilities Act of 1990, and ADA Amendments Act. This policy extends to both employment and admission to participation in the programs, services and activities of the City of Bremerton. Reasonable accommodation for employees or applicants for employment will be provided

13. GENERAL PROVISIONS.

Interpretation and Modification. This Agreement, together with any attached Attachments, contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior statements or agreements, whether oral or written, shall be effective for any purpose. Should any language in any Attachments to this Agreement conflict with any language in this Agreement, the terms of this Agreement shall prevail. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement. Any provision of this Agreement that is declared invalid, inoperative, null and void, or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Any act done by either Party prior to the effective date of the Agreement that is consistent with the authority of the Agreement and compliant with the terms of the Agreement, is hereby ratified as having been performed under the Agreement. No provision of this Agreement, including this provision, may be amended, waived, or modified except by written agreement signed by duly authorized representatives of the Parties.

Non-Waiver of Breach: The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

Choice of Law and Venue: This Agreement shall be interpreted according to the laws of the State of Washington. Any judicial action to resolve disputes arising out of this Agreement shall be brought in Kitsap County Superior Court.

Written Notices: All communications regarding this Agreement shall be sent to the parties at the addresses listed below by registered or 1st class mail, or by personal service, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

Notices to be sent to:

Notices to be sent to:

CITY:

VENDOR:

Attn: _____
City of Bremerton
345 6th Street, Suite 100
Bremerton, WA 98337-1891

Attn: _____

Entire Agreement: This Agreement and its Attachments constitutes the entire agreement between the Parties, and the Parties acknowledge that there are no other agreements, written or oral, that have not been set forth in the text of this Agreement.

Assignment and Beneficiaries. Neither the Contractor nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the

other Party. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent. Subject to the foregoing, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

Compliance with Laws. The Contractor shall comply with and perform the Services in accordance with all applicable federal, state, local, and city laws including, without limitation, all City codes, ordinances, resolutions, regulations, rules, standards, and policies, as now existing or hereafter amended, adopted, or made effective.

Contractor's Employees - Employment Eligibility Requirements. The Contractor and any subcontractors shall comply with E-Verify as set forth in CITY Municipal Code Chapter 1.42. E-Verify is an Internet-based system operated by United States Citizenship and Immigration Services in partnership with the Social Security Administration. E-Verify is free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The Contractor shall enroll in, participate in and document use of E-Verify as a condition of the award of this contract. The Contractor shall continue participation in E-Verify throughout the course of the Contractor's contractual relationship with the City. If the Contractor uses or employs any subcontractor in the performance of work under this contract, or any subsequent renewals, modifications or extension of this contract, the subcontractor shall register in and participate in E-Verify and certify such participation to the Contractor. The Contractor shall show proof of compliance with this section, and/or proof of subcontractor compliance with this section, within three (3) working days of the date of the City's request for such proof.

Waiver: Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

Non-Waiver of Breach: The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

Execution. In consideration of the mutual benefits to be derived and the promises contained herein, the City of Bremerton, Washington, a municipal corporation ("City") and the individual Public Defender(s) who will perform services under this contract (the "Contractor") have entered into this Agreement.

Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individual is duly authorized to execute and deliver this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and with the same effect as if all Parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. The signature and acknowledgment pages from such counterparts may be assembled together to form a single instrument comprised of all pages of this Agreement and a complete set of all signature and acknowledgment pages. The date upon which the last of all of the Parties have executed a counterpart of this Agreement shall be the "date of mutual execution" hereof.

[Signature page follows]

Exhibit "A"

IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be executed the day and year first above written.

CITY OF BREMERTON

CONTRACTOR

XXX

APPROVED AS TO FORM:

City Attorney, Kylie J. Finnell

Agreed upon Attachments will be added. They will include at least the

- following: Attachment A - Services
- Attachment B - Compensation and Contract Review
- Attachment C - Insurance Certificate
- Attachment D - Standards

ATTACHMENT "A"

SERVICES

1. Scope of Services, Standards and Warranties. In the event of conflict on the part of the City's primary Public Defender, the Contractor will provide indigent defense services in misdemeanor cases in accordance with the Washington State Supreme Court Standards for Indigent Defense (hereinafter "Standards").

1.1 The Contractor shall certify compliance with the Supreme Court Rule governing case load quarterly with the CITY COURT on the form established for that purpose by court rule. A copy of each and every such certification shall be provided to the City contemporaneously with filing. The Contractor warrants that he/she shall conform to the case load limitations not only with respect to services under this Agreement but also with respect to his/her practice as a whole, including other contracts for public defense and/or private practice.

Contractor will maintain contemporaneous records on a daily basis documenting all work performed on the assigned case and will provide a copy to the City or its designated representative for review, provided however that the entries shall be appropriately redacted to preserve the attorney client privilege. The records shall include notation of any motion made as well as the filing of a motion with the prosecutor resulting in negotiation of a reduced sentence or dismissal. Contractor shall document the use of an investigator as appropriate, the failure of the defendant to appear for trial or a court appearance. The Contractor warrants that he has sufficient capacity to take on the case and shall supply the following information on the request of the City or its designated representative:

1.1.1 the number and type of criminal cases handled outside of this contract (including cases assigned by another public entity); and

1.1.2 The percentage of the Contractor's practice spent on civil or non-criminal matters, and the year-to-date number of cases outside of this agreement. The Contractor's caseload limit shall be reduced by the time the Contractor spends representing private clients or defendants that have not been formally appointed pursuant to a finding of indigence pursuant to Office of Public Defender guidelines.

1.3 The Contractor further warrants that the payment reflected in Attachment "B", Compensation reflects all infrastructure, support, administrative services, to include training, and systems necessary to comply with the Decision and Standards except as provided in Section 2.5 of Attachment "B". In addition, the City shall pay for investigator services beyond the Base Compensation for investigation services as approved by the court.

1.4 The Contractor promises that he/she will promptly notify the City if any circumstance, including change in rule or law, renders it difficult or impossible to provide service in compliance with the Decision and/or the Standards.

1.5 Screening to determine eligibility for legal representation at public expense will be provided by the Court. Contractor shall be provided written notice of the name, address, and phone number of each Defendant to whom the Contractor has been appointed as Attorney, together with the charge and cause number within a reasonable time after determination of eligibility. Receipt of written notice shall constitute appointment as Attorney to provide legal service to such appointed Defendants. In addition, The CITY COURT Judge may offer direct appointments of defendants in open court.

1.6 The Contractor will make Attorneys available to talk and meet with appointed client in the Kitsap County Jail, or other facility used by the City within thirty (30) miles of the City of Bremerton when it is deemed appropriate by the contractor in the furtherance of the attorney/client relationship.

1.7 Legal counsel and services. Legal Counsel provided by the contract shall include:

1.7.1 Representation of the indigent client at arraignment based on the schedule determined by the COURT;

1.7.2 Representation of the indigent client at all COURT proceeding after appointment;

1.7.3 Arrival to all relevant COURT calendars on time and appropriately prepared;

1.7.4 Initiate contact with the indigent client in a confidential setting whether by phone or in-person within 72 hours of assignment and maintaining the attorney-client relationship which includes appropriate response to client contact, legal research, investigation, case preparation, witness interviews, legal advisement, preliminary hearings and motions, plea negotiations, trial preparation, and trial or disposition without trial, sentencing recommendations, the filing of a notice of appeal with specific errors noted, designation of record to be transmitted to Superior Court, and motion and orders for finding of indigence and appointment of counsel on appeal, and preparation of all legal documents, all as necessary to ensure competent legal representation of those determined to be indigent. The Contractor will return client phone calls or other attempts to contact the Public Defender in a prompt and appropriate manner. The Contractor shall provide the prosecutor and City police department with contact information assuring twenty-four (24) hour a day access for the limited purposes of critical stage representation.

1.7.5 Comply with all applicable public records and records retention laws;

1.7.6 Be available to meet in-person with clients in the Kitsap County Jail, or other facility used by the City within thirty (30) miles of the City of Bremerton.

1.7.7 Whenever the Contractor is counsel of record for an individual who is jailed on a City matter, the Contractor shall be available to appear in Court before such individual has been in custody for 24 hours; except that, this does not require the Contractor to be available to appear in Court on Saturdays, Sundays, or City holidays.

1.8 The Contractor shall notify the City of any Attorney or intern employed or contracted with by the Contractor. All such Attorneys or interns shall agree to abide by the standards and terms of this Agreement. Any Attorney employed by the Contractor shall have the authority to perform the Services. The Contractor may employ outside associated council to assist at the Contractor's expense, which shall include the requirement to follow the standards and terms contained in this agreement.

Attachment "B"

Compensation, Expense, Reimbursement and Renegotiation

1. Base Compensation. Effective upon execution of the contract, the City shall pay to the Contractor for services rendered under this Contract the rate of \$300 per Case. This compensation amount represents the resources necessary to provide Public Defender services through the undersigned counsel as supplemented in Section 3 below, along with all infrastructure, support, and systems necessary to comply with the Standards and Decision including by way of illustration and not limitation, training, research, secretarial and office supplies. The parties believe that they have provided sufficient capacity through this contract as well as contracts with other counsel for backup and conflict public defense case, to ensure that, in all respects and at all times, public defense service will comply with the Standards and Decision as identified in Attachment "A." Except as expressly provided in Section 2, below, the cost of all infrastructure, administrative support, and systems, as well as standard overhead services necessary to comply with the established standards, are included in the base payment provided in Section I above.

2. Payments in Addition to the Base Compensation. The City shall pay directly to the service provider or Contractor, as appropriate, for the following case expenses when reasonably incurred and approved by the Court or Contract Administrator from funds available for that purpose:

2.1 Discovery. Discovery shall be provided in accordance with law and court rule by the City Prosecutor.

2.2 Preauthorized Expenses. Case expenses may be requested by the Contractor and preauthorized by order of the Court. The additional amount will be paid to the Contractor as the City is billed for these services. Unless the services are performed by Contractor's staff or subcontractors, such expenses include, but are not limited to:

2.2.1 investigation expenses;

2.2.2 medical and psychiatric evaluations;

2.2.3 expert witness fees and expenses;

2.2.4 polygraph forensic and other scientific tests;

2.2.5 unusually extensive computerized legal research; and

2.2.6 any other non-routine expenses the Court finds necessary and proper for the investigation, preparation, and presentation of a case. In the event any expense is found by the Court to be outside of its authority to approve, the Contractor may apply to the Contract Administrator for approval, such approval not to be unreasonably withheld.

2.3 Lay Witness Fees. Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

2.4 Copying Clients ' Files. The cost, if it exceeds \$15 of providing one copy of a client 's or former client' s case file upon client ' s or client 's appellate, post-conviction relief or habeas corpus attorney ' s request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

2.5 Transcripts. Copies of direct appeal transcripts for representation in post-conviction relief cases. The cost, if it exceeds \$15 of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;

2.6 Records. To the extent such materials are not provided through discovery, medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$50; and

2.7 Process Service. The normal, reasonable cost for the service of a Subpoena.

ATTACHMENT “C”

Insurance Certificate

ATTACHMENT D: STANDARDS

CrR 3.1 STANDARDS FOR INDIGENT DEFENSE

Preamble

The Washington Supreme Court adopts the following Standards to address certain basic elements of public defense practice related to the effective assistance of counsel. The Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1/ CrRLJ 3.1/JuCR 9.2/ MPR 2.1 references specific “Applicable Standards.” The Court adopts additional Standards beyond those required for certification as guidance for public defense attorneys in addressing issues identified in *State v. A.N.J.*, 168 Wn.2d 91 (2010), including the suitability of contracts that public defense attorneys may negotiate and sign. To the extent that certain Standards may refer to or be interpreted as referring to local governments, the Court recognizes the authority of its Rules is limited to attorneys and the courts. Local courts and clerks are encouraged to develop protocols for procedures for receiving and retaining Certifications.

[Adopted effective October 1, 2012; Amended effective February 1, 2021.]

Standard 1. Compensation

[RESERVED]

Standard 2. Duties and Responsibilities of Counsel

[RESERVED]

Standard 3. Caseload Limits and Types of Cases

Standard 3.1. The contract or other employment agreement shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.

[Adopted effective October 1, 2012.]

Standard 3.2. The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, city offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.

[Adopted effective October 1, 2012.]

Standard 3.3. General Considerations. Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources.

Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of the case types in the attorney's caseload, but it is not a factor in adjusting the applicable numerical caseload limits except as follows: attorneys with less than six months of full time criminal defense experience as an attorney should not be assigned more than two-thirds of the applicable maximum numerical caseload limit. This provision applies whether or not the public defense system uses case weighting.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in standard 3.4 and must be taken into account when assessing an attorney's numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

Definition of case. A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

[Adopted effective October 1, 2012; Amended effective January 1, 2015.]

Standard 3.4. Caseload Limits. The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 felonies per attorney per year; or

300 misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this standard, 400 cases per year; or

250 juvenile offender cases per attorney per year; or 80

open juvenile dependency cases per attorney; or 250 civil

commitment cases per attorney per year; or

1 active death penalty trial court case at a time plus a limited number of non-death-penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of standard 3.2; or

36 appeals to an appellate court hearing a case on the record and briefs per attorney per year. (The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)

Full-time rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full-time attorneys.

In public defense systems in which attorneys are assigned to represent groups of clients at first appearance or arraignment calendars without an expectation of further or continuing representation for cases that are not resolved at the time (except by dismissal) in addition to individual case assignments, the attorneys' maximum caseloads should be reduced proportionally recognizing that preparing for and appearing at such calendars requires additional attorney time. This provision applies both to systems that employ case weighting and those that do not.

Resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case. This provision applies both to systems that employ case weighting and those that do not.

In public defense systems in which attorneys are assigned to represent groups of clients in routine review hearing calendars in which there is no potential for the imposition of sanctions, the attorneys' maximum caseloads should be reduced proportionally by the amount of time they spend preparing for and appearing at such calendars. This provision applies whether or not the public defense system uses case weighting.

[Adopted effective October 1, 2013, except paragraph 3, regarding misdemeanor caseload limits, effective January 1, 2015; Amended effective January 1, 2015.]

Standard 3.5. Case Counting and Weighting. Attorneys may not count cases using a case weighting system, unless pursuant to written policies and procedures that have been adopted and published by the local government entity responsible for employing, contracting with, or appointing them. A weighting system must:

A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;

B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation;

D. be periodically reviewed and updated to reflect current workloads; and

E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upward. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

[Adopted effective October 1, 2012; Amended effective January 1, 2015.]

Standard 3.6. Case Weighting Examples. The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

A. Case Weighting Upward. Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers, and/or expenditures of time and resources should be weighted upward and counted as more than one case.

B. Case Weighting Downward. Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.

i. Cases that result in partial representations of clients, including client failures to appear and

recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).

ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions, representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Noncomplex sentence violations should be weighted as at least 1/3 of a case.

iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.

iv. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative noncriminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

[Adopted effective October 1, 2012; Amended effective January 1, 2015.]

Related Standards

ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION Defense Function std. 4-1.2 (3d ed. 1993)

ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES std. 5-4.3 (3d ed. 1992)

AM. BAR ASS'N, GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES (rev. ed. 2003)

ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-441 (2006) (*Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*)

Am. Council of Chief Defenders, *Statement on Caseloads and Workloads* (Aug. 24, 2007) ABA House of Delegates, *Eight Guidelines of Public Defense Related to Excessive Caseloads* (Aug. 2009)

TASK FORCE ON COURTS, NAT'L ADVISORY COMM'N ON CRIMINAL STANDARDS & GOALS, COURTS std. 13.12 (1973)

MODEL CODE OF PROF'L RESPONSIBILITY DR 6-101.

ABA House of Delegates, *The Ten Principles of a Public Defense Delivery System* (Feb. 2002)

ABA House of Delegates, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (Feb. 1996)

Nat'l Legal Aid & Defender Ass'n, Am. Council of Chief Defenders, Ethical Opinion 03- 01 (2003).

Nat'l Legal Aid & Defender Ass'n, *Standards for Defender Services* std. IV-1 (1976) Nat'l Legal Aid

& Defender Ass'n, *Model Contract for Public Defense Services* (2000) Nat'l Ass'n of Counsel for

Children, *NACC Recommendations for Representation of*

Children in Abuse and Neglect Cases (2001) Seattle

Ordinance 121501 (June 14, 2004)

Indigent Defense Servs. Task Force, Seattle-King County Bar Ass'n, *Guidelines for Accreditation of Defender Agencies* Guideline 1 (1982)

Wash. State Office of Pub. Defense, *Parents Representation Program Standards of Representation* (2009)

BUREAU OF JUDICIAL ASSISTANCE, U.S. DEP'T OF JUSTICE, INDIGENT DEFENSE SERIES NO. 4, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001) (NCJ 185632)

Standard 4. Responsibility of Expert Witnesses

[RESERVED]

Standard 5. Administrative Costs

Standard 5.1. [Reserved.]

Standard 5.2.

A. Contracts for public defense services should provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel; telephones; law library, including electronic legal research; financial accounting; case management systems; computers and software; office space and supplies; training; meeting the reporting requirements imposed by these standards; and other costs necessarily incurred in the day-to-day management of the contract.

B. Public defense attorneys shall have (1) access to an office that accommodates confidential meetings with clients and (2) a postal address, and adequate telephone services to ensure prompt response to client contact.

[Adopted effective October 1, 2012.]

Standard 6. Investigators

Standard 6.1. Public defense attorneys shall use investigation services as appropriate. [Adopted effective October 1, 2012.]

Standards 7-12

[RESERVED]

Standard 13. Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

[Adopted effective October 1, 2012.]

Standard 14. Qualifications of Attorneys

Standard 14.1. In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and

C. Be familiar with the Washington Rules of Professional Conduct; and

D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; when representing youth, be familiar with the Performance Guidelines for Juvenile Defense Representation approved by the Washington State Bar Association; and when representing respondents in civil commitment proceedings, be familiar with the Performance Guidelines for Attorneys Representing Respondents in Civil Commitment Proceedings approved by the Washington Bar Association; and

E. Be familiar with the Washington State Guidelines for Appointed Counsel in Indigent Appeals; and

F. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and

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

H. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

[Adopted effective October 1, 2012; Amended effective April 24, 2018; February 1, 2021; September 1, 2021.]

Standard 14.2. Attorneys' qualifications according to severity or type of case¹:

A. Death Penalty Representation. Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. At least five years' criminal trial experience; and
- iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
- iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
- v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
- vi. Have completed at least one death penalty defense seminar within the previous two years; and
- vii. Meet the requirements of SPRC 2.²

¹ Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

SPRC 2
APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct

appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist, and an investigator. Psychiatrists, psychologists, and other experts and support personnel should be added as needed.

B. 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:

- i. The minimum requirements set forth in Section 1; and
 - ii. Either:
 - a. has served two years as a prosecutor; or
 - b. has served two years as a public defender; or two years in a private criminal practice;
- and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases—Class B Violent Offense. Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either;
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Sex Offense Cases. Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Has been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases—All Other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each attorney representing a defendant accused of a Class B felony not defined in

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified

for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law (and) be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel.

Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. 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; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. 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:

- i. The minimum requirements set forth in Section 1;³ and
- ii. Have at least:
 - a. four years' criminal trial experience; and
 - b. one year's experience as a felony defense attorney; and
 - c. experience as lead counsel in at least one Class A felony trial; and
 - d. 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.

G. Juvenile Cases—Class A. Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or

³ RCW 10.101.060(1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

- b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. Juvenile Cases—Classes B and C. Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. Has been trial counsel alone in five misdemeanor cases brought to a final resolution;
and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

I. Juvenile Sex Offense Cases. Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Has been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

J. Juvenile Status Offenses Cases. Each attorney representing a client in a “Becca” matter shall meet the

following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Either:
 - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
 - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.

K. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.

L. Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Attorneys handling termination hearings shall have six months’ dependency experience or have significant experience in handling complex litigation.
- iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
- iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.

M. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
- iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
 - a. served one year as a prosecutor; or
 - b. served one year as a public defender; or one year in a private civil commitment practice, and
 - c. been trial counsel in five civil commitment initial hearings; and
 - iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

N. Sex Offender “Predator” Commitment Cases. Generally, there should be two counsel on each sex

offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
 - a. Three years' criminal trial experience; and
 - b. One year's experience as a felony defense attorney or one year's experience as a criminal appeals attorney; and
 - c. Experience as lead counsel in at least one felony trial; and
 - d. Experience as counsel in cases involving each of the following:
 1. Mental health issues; and
 2. Sexual offenses; and
 3. Expert witnesses; and
 - e. Familiarity with the Civil Rules; and
 - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment case should meet the minimum requirements in Section 1 and have either one year's experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

O. Contempt of Court Cases. Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

P. Specialty Courts. Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives. [Adopted effective October 1, 2012.]

Standard 14.3. Appellate Representation. Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and

B. Either:

- i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
- ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing, or other comparable work.

C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a court of limited jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing a RALJ appeal.

[Adopted effective October 1, 2012.]

Standard 14.4. Legal Interns.

A. Legal interns must meet the requirements set out in APR 9.

B. Legal interns shall receive training pursuant to APR 9, and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

[Adopted effective October 1, 2012.]

Standards 15-18

[RESERVED]

CERTIFICATION OF COMPLIANCE

For criminal and juvenile offender cases, and civil commitment proceedings under chapter 71.05 RCW, a signed Certification of Compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

<p style="text-align: center;">_____ Court of Washington</p> <p>for _____</p> <hr/> <p>State of Washington _____,</p> <p style="text-align: right;">Plaintiff</p> <p>vs.</p> <p>_____</p> <p style="text-align: right;">Defendant</p>	<p>[] No.: _____</p> <p>[] Administrative Filing</p> <p>CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CrR 3.1/CrRLJ 3.1/JuCR 9.2/MPR 2.1</p>
--	--

The undersigned attorney hereby certifies:

1. Approximately _____% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
 - a. Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
 - b. Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
 - c. Investigators:** I have investigators available to me and will use investigative services as appropriate, in compliance with Standard 6.1.
 - d. Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases. [Effective October 1, 2013 for felony and juvenile offender caseloads; effective January 1, 2015 for misdemeanor caseloads; effective February 21, 2021 for civil commitment caseloads. I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]
 - e. Specific Qualifications:** I am familiar with the specific case qualifications in Standard 14.2, Sections B-K and will not accept appointment in a case as lead counsel unless I meet the qualifications for that case. [Effective October 1, 2013; effective February 1, 2021 for civil commitment cases.]

Signature, WSBA#

Date