

RESOLUTION NO. 1629

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON ADOPTING PUBLIC DEFENSE STANDARDS

WHEREAS, RCW 10.101.030 requires cities operating a court to adopt standards for delivery of public defense services; and

WHEREAS, the Honorable Rober S. Lasnik of the Federal District Court for Western Washington in his decision in *Wilber v. Mt. Vernon* provides guidance to cities regarding the provision of indigent defense services and the funding and evaluation of such services; now, therefore,

THE CITY COUNCIL OF THE CITY OF FIFE DOES RESOLVE AS FOLLOWS:

Section 1. The City of Fife hereby adopts the following standards for the provision of the Public Defense Services:

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 Washington State Bar Association standards for Indigent Defense Services (June 3, 2011), the Rules of Professional Conduct, case law and in particular the decision in *Wilbur v. Mt. Vernon*, 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 through an established screening process.

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 City's Municipal Court. Copies of each Public Defender's certification shall be available to the City on request.

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. ADMINISTRATION, SUPPORT SERVICES AND INFRASTRUCTURE.

2.1 Contracts for services and proposals submitted in pursuit of such contracts shall require the Public Defender to provide through adequate compensation provided in the contract, adequate administrative support, including but not limited to:

2.1.1 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 1.1 above) and provide for adequate staffing and other costs associated with the day-to day management of a law office.

2.1.2 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 the Public Defender.

2.2 The Public Defender shall provide for adequate staffing under the contract. An adequate staff includes the provision for investigative services, 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 translator.

2.3 The contract shall provide for additional compensation for extraordinary costs associated with defense, such as expert witness fees.

3. EVALUATION AND MONITORING.

3.1 Public Defense Services shall include a case reporting system and information management system. Such systems shall have the capability to provide periodic reports to the City regarding the caseloads generated under the contract for each attorney and intern providing services under the contract, case disposition and history.

4. CASELOAD LIMITS.

The Public Defender shall comply with the City of Fife Public Defender Caseload Weighting Standards for Misdemeanor and Gross Misdemeanor Offenses attached hereto as Exhibit A which are hereby adopted as the case load weighting policy of the City of Fife.

5. CONTRACT WARRANTY.

The Public Defender, Conflict Counsel and every attorney providing indigent defense services by contract with the City shall warrant that he/she has:

5.1 Read the *Wilbur* decision and will provide service in accord with its provisions, and

5.2 Ensured that the compensation provided is sufficient to provide adequately for the training, administrative and staff services, and infrastructure required by these Standards, Court Rule and the State and Federal Constitution.

6. TERMINATION AND REMOVAL.

6.1 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 interest of the client, and/or the willful disregard of these Standards. Termination may also occur for violation of the express terms of the contract, 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.

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

7. SUBCONTRACTORS, SUBSTITUTION, AND CONFLICT COUNSEL.

7.1 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 an alternative or Conflict Counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.

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

8. UPDATE AND EVALUATION.

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

Section 2. The City Clerk shall file this resolution with the State of Washington Office of Public Defense.

ADOPTED by the City Council at an open public meeting held on the 14th day of November, 2014.

Timothy A. Curtis

Tim Curtis, Mayor

Attest:

Carol Etgen

Carol Etgen, City Clerk

EXHIBIT A

**City of Fife
Public Defender
Caseload Weighting Standards
For
Misdemeanor
And
Gross Misdemeanor
Offenses

October 2014**

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A. Charge Category Examples

(from 2014 OPD Model Public Defense Misdemeanor Case Weighting Policy)

I. Purpose of the City's Caseload Weighting Policies

The City of Fife and the Fife Municipal Court are committed to ensuring that all indigent persons charged with a criminal offense in Fife Municipal Court, and who have been found eligible for the assistance of the Public Defender, receive effective legal assistance.

This policy implements a system for weighting public defense cases for purposes of certifying public defense misdemeanor caseloads pursuant to the Washington Supreme Court's *Standards for Indigent Defense*. This policy recognizes that appropriate case weighting allows reasonable workloads for public defense attorneys consistent with applicable rules and standards.

Moreover, to ensure that all Public Defender cases continue to receive effective assistance in Fife Municipal Court, the weighting system described in these Policies shall be reviewed from time to time by all the parties and adjusted as needed to maintain the rights of all indigent defendants.

2. Applicable Court Rules, Regulations, and Standards

A. Specific applicable rules related to public defense. The City of Fife's Caseload Weighting Standards are based upon the requirements and guidelines for effective public defense contained in the following:

- (1) Washington State Rules of Professional Conduct
- (2) Criminal Rules for Courts of Limited Jurisdiction
- (3) Washington Supreme Court Standards for Indigent Defense
- (4) City of Fife Resolution number _____ adopting the City's Weighting Standards
- (5) Office of Public Defense Model Case Weighting Policy

B. Right to effective assistance of counsel—Generally. The right of an indigent person to effective assistance of counsel in a criminal case flows from the language of the Sixth Amendment of the federal Constitution,¹ and is applied to the states via the Due Process Clause of the Fourteenth Amendment.² See, e.g., *Gideon v. Wainwright*, 372 U.S. 335 (1963). In the State of Washington, the right to counsel for a defendant in a criminal case is also guaranteed under Article I, Standard 22 of the state Constitution ("Rights of the Accused"),³ and is codified under RCW 10.101.005⁴ and, in the case of municipal courts, CrRLJ 3.1 ("Right to and Assignment of Lawyer").

¹ "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, *and to have the Assistance of Counsel for his defence.*" United States Constitution, Amendment VI. (Emphasis added.)

² "**Standard 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws." United States Constitution, Amendment XIV. (Emphasis added.)

³ In criminal prosecutions the accused shall have the right to appear and defend in person, *or by counsel*, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases...[.] *In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.* Washington State Constitution, Article 1, Standard 22. (Emphasis added.)

⁴ "The legislature finds that effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches." RCW 10.101.005 ("Legislative Finding").

C. **Statutes governing standards for indigent defense.** Washington has required by statute since 1989 that cities adopt standards for public defense services. See RCW 10.101.030.⁵ This statute states that any standards for indigent defense “endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards.” (Emphasis added.) However, the state Supreme Court has outlined and adopted new general requirements for effective representation of indigent persons. See below.

D. **Caseload limits adopted by Supreme Court.** The Washington State Supreme Court adopted *Standards for Indigent Defense* on June 15, 2012, with amendments adopted on September 7, 2012. These *Standards* became effective on October 1, 2012, except for Standard 3.4, which deals with caseload limits for public defenders. These caseload limits became effective September 1, 2013. The Office of Public Defense (OPD) published its *Model Case Weighting Policy* in April 2014, and jurisdictions are required to adopt and implement any local policy by **January 1, 2015**.

The *Standards* contain caseload limits for misdemeanor crimes handled by a Public Defender. See Standard 3.4. A city may either adopt a flat numerical limit of **400** misdemeanor cases per Public Defender per year, or it may develop and adopt a system that weights various types of cases, based on the complexity of the case. Under such a system, a particular case may be weighted as less than a full case, such as one-third or one-half of a case. *However, if a weighting system is used, a single Public Defender is limited to handling a maximum of **300** misdemeanor cases per year.*

NOTE: While the *Standards* allow a small degree of flexibility in how a city decides to weigh its cases, the *Standards* do **not** allow a public defender to

⁵ “Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. *The standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards.*” RCW 10.101.030 (emphasis added).

exceed the new maximum number of 300 or 400 misdemeanor cases handled by each public defender in a single year. In addition, should the number of public defense cases require three fulltime public defenders to stay under the caseload limits for each attorney, the federal courts have ruled that a fourth fulltime public defender is required to supervise the work of the other three public defenders. (*Wilbur v. City of Mt. Vernon (2013)*).

E. Rule 9 interns. Standard 3.4 says Rule 9 interns who have not graduated from law school cannot have caseloads that exceed 25% of the caseload limits established for full-time public defenders. If the City of Fife adopts a flat numerical limit of 400 misdemeanor cases per year, each Rule 9 student is limited to handling a maximum of 100 cases annually. If a 300-case weighted system is adopted, each Rule 9 student is limited to 75 cases annually.

F. City must officially adopt a written weighting system and file it with the State. If the City wishes to adopt a case-weighting system, Standard 3.5 states that “written policies and procedures” regarding weighting of cases must “have been adopted and published by the local government entity responsible for employing, contracting with, or appointing” the Public Defender(s).

The *Standards* do not state what “officially adopted” means. Thus, the City may adopt the weighting system by ordinance, resolution, or other legally-recognized method, so long as the system is “adopted” and “published” prior to being put into effect.

Whatever weighting system is adopted must be filed with the *State of Washington Office of Public Defense*, per Standard 3.5.E.

3. Definitions

- A. Administrator:** The designated supervisor of the City's public defense services. In the City of Fife, that person shall be the City's City Manager, or their written designee.
- B. "Case":** 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.
- i. In courts of limited jurisdiction, multiple citations from the same incident can be counted as one "case."
 - ii. The number of counts in a single cause number does not affect the definition of a "case."
 - iii. When there are multiple charges or counts arising from the same set of facts, the weighted credit will be assigned based on the most serious charge.
- C. Case weighting:** The process of assigning a numerical value, or "weighted credit," to specific types of cases that recognizes the greater or lesser attorney workload required for those cases compared to an average case.
- D. Caseload:** The complete array of cases in which an attorney represents or provides service to clients.
- E. Docket / Calendar:** A grouping of filings where a public defense attorney is designated to represent indigent defendants without an expectation of further or continuing representation. Examples include, but are not limited to, first appearance calendars and arraignment calendars.
- F. Full time:** Working approximately 40 hours per week. It is presumed that a "full time" public defense attorney spends approximately 1,800 hours annually on case representation. It is expected that other work time is

spent on administrative activities, attending CLEs, participating in professional associations or committees, and spending time on vacation, holiday, or sick leave.

- G. Local factors:** Practices, characteristics, or challenges that are unique to the delivery of public defense in a given jurisdiction, and that substantially impact the time required for effective delivery of public defense services.
- H. Non-Charge Representations:** Matters where public defense attorneys represent clients who are eligible for public defense representation for matters that do not involve the filing of new criminal charges. Examples include, but are not limited to, sentence violations, extraditions, and representations of material witnesses.
- I. Partial Representations:** Situations where clients are charged with crimes, but representation is either cut short at early stages of the case, or begins significantly later. Such situations include, but are not limited to, client failures to appear, preliminary appointments in cases in which no charges are filed, withdrawals or transfers for any reason, or limited appearances for a specific purpose.
- J. Public Defense Attorney:** A licensed attorney who is either employed or contracted to represent indigent defendants. "Public Defense Attorney" also refers to a licensed attorney who is list-appointed to represent indigent defendants on a case-by-case basis.
- K. Weighted credit:** One weighted credit represents a type of case which, on average, requires six hours of attorney time.

4. Misdemeanor Caseload Limits

As provided in the Washington Supreme Court *Standards for Indigent Defense*, the caseload of a full-time public defense attorney should not exceed 300 misdemeanor weighted credits per year, which is equivalent to the time spent on 400 average misdemeanor cases per year. The caseload of a full-time Rule 9 intern who has not graduated from law school may not exceed 75 misdemeanor weighted credits per year.

5. General Considerations

A. Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort.

B. Caseload limits are set to ensure that all public defense attorneys have adequate time to provide quality representation.

C. Caseload limits presume a reasonably even distribution of cases throughout the year.

D. If the public defense attorney is carrying a mixed caseload with non-misdemeanor cases, the attorney's caseload should be calculated proportionately by case type, as provided in the Standards.

E. If the public defense attorney also maintains a private law practice, the public defense caseload should be proportionate to the percentage of work time the attorney devotes to public defense.

F. If the attorney provides public defense services in multiple courts, the combination of cases from all courts are used for caseload calculations.

6. Weighted Credits

A. Weighted Credits by Criminal Charge Category

The default weighted credits to be assigned by criminal charge category are as follows; in addition, because some charges may be amended as a result of further investigation, legal issues, or negotiation, the weight assigned to each case is determined by the final type of charge to which a guilty finding is ultimately entered.

Note: These weights may be adjusted upward or downward on a case-by-case basis, but cannot be adjusted downward greater than .05 credits, per the OPD Model Weighting Policy.

Alcohol related offenses (non-DUI)	0.50 credits
Assault (non-DV)	1.0
Criminal Trespass 1 or 2	0.75
Disorderly Conduct (not Indecent Exposure)	0.50
Domestic Violence (Assault, Reckless Endangerment)	1.5
DUI / Physical Control	1.5
DWLS 1 / DWLS 2	0.75
DWLS 3	0.50
Harassment	1.5
Hit & Run (Attended or Unattended)	0.75
Malicious Mischief	0.75
Obstructing	0.75

Racing	1.0
Reckless Driving	1.0
Simple Traffic Offenses (e.g., NVOL-1)	0.50
Theft / Shoplifting	0.75
Violation of No Contact Order	0.75
Weapons Related Offenses	1.0
Other Unlisted Misdemeanors	0.75

See Attachment B for examples of specific crimes within each general category listed above.

It is important to remember that in all cases, even those with fewer weighted credits and those that may be resolved by routine non-criminal resolutions such as diversion or reduction to an infraction, an appointed public defense attorney must first meet the basic requirements for providing effective assistance of counsel, such as interviewing and fully communicating with the client, carefully reviewing the evidence, obtaining records, investigating as appropriate, and preparing for court.

B. Guilty Pleas at First Appearance or Arraignment

As required by Standard 3.5, resolution of cases by pleas of guilty to criminal charges at a first appearance or arraignment hearing are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients. Therefore, if the attorney is appointed, these guilty pleas must be valued as **one case**.

C. Routine Early Non-Criminal Resolutions

When an attorney is appointed to represent clients facing charges that, by local practice, are resolved at an early stage by diversion, reduction to an infraction, stipulated order of continuance, or other alternative non-criminal disposition that does not involve a finding of guilt, Standard 3.6(B)(v) permits the attorney to count them as no less than **1/3 of a case**.

DWLS 3	0.33 credits
SOC (resulting in dismissal)	0.33
Other Deferral (resulting in dismissal)	0.33

D. Partial Representation

A partial representation is counted based on the amount of time that an attorney has spent on the case. Each hour of work is assigned **0.17** weighted credits, up to the maximum weighted credits normally assigned for the case type.

E. Sentence Violations and Other Non-Charge Representation:

As stated in Standard 3.6(B)(ii), sentence violations and other non-charge representations may be counted as no fewer credits than **1/3 of a case**.

However, where the public defense attorney has already been appointed to the case and the type of alleged violation or hearing involves no more than reviewing the docket and a brief discussion with the client to adequately prepare to discuss the matter with the court, the time spent on this matter shall be included in the normal **hourly weight of 0.17 credits** for the entire calendar or appearance. Examples include, but are not limited to: filing proof of completion of Alcohol Drug Information School or DUI Victim's Impact Panel; reviewing alcohol/drug, mental health, or domestic violence assessments; confirming community service hours; filing proof of installation of ignition interlock or electronic home monitoring; requesting a continuance to obtain needed information. *See Local Factors section.*

F. Dockets / Calendars:

Cases on a criminal first appearance or arraignment docket where the attorney is designated, appointed, or contracted to represent a group of clients without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal or amendment to an infraction) **are not counted individually**. Instead, the attorney's hours needed for appropriate client contact, preparation, and court time are calculated as a percentage of the net annual hours of work time, and then applied to reduce the attorney's caseload. Each hour of such docket time is assigned **0.17 weighted credits**.

7. Adjustments to Weighting

- A. Case-Specific Adjustments.** Because credits are assigned to cases based on an average amount of time needed for each charge type, ordinary deviations in how complex a case is or how long it takes do not justify an adjustment to a case's credit value. It is assumed that attorneys will receive a mix of cases of varying complexity and effort, ending with a combination of cases that closely approximates a full-time caseload. However, an attorney may request that the weighted credit be adjusted upward for any particular case that involves substantially more work. Examples where a case weight may be adjusted upward include, but are not limited to: where a client's competency is litigated; extraordinarily long trials; cases that go to jury trial more than once. *Weighted credits may not be adjusted downward unless pursuant to the process identified in section 7.B.*
- B. Local Factors.** The "Comments" included for Section 7.B. of the OPD's *Model Misdemeanor Weighting Policy* (2014) recognize a number of factors that may increase or decrease "the amount of time required for [adequate] public defense representation[.]"

Listed examples of local factors that may increase the amount of time include:

- Long periods of time waiting for cases to be called in court
- Long periods of time waiting for access to clients in jail

- Long travel time to court, jail, crime scenes, or other meetings
- The scheduling of court appearances
- Absence of access to technology
- Therapeutic court cases
- Disproportionately high number of defendants with limited English
- Disproportionately high number of clients with mental illness

Listed examples of local factors that may decrease the amount of time include:

- Court calendars or dockets dedicated to public defense cases, resulting in reduced attorney waiting time
- Technology that demonstrably saves public defense attorney time. Examples include electronic discovery and video-conferencing with incarcerated clients.

Most of the factors listed above support a substantial reduction in weighted credits for review hearings in Fife Municipal Court. For example:

- The public defender need not wait long periods of time waiting for cases to be called in court. Review calendars are scheduled so that the public defender cases are handled first and as ready.
- The public defender need not wait long periods of time waiting for access to clients in jail. The City of Fife Jail is physically connected to the courtroom. The public defender may enter the jail directly or have a defendant brought quickly into the courtroom, as needed.
- The public defender need not travel long distances to court, jail, or other meetings. The City's Criminal Justice Center is compact and contains the court, jail, police department, and meeting areas in one building.

- The scheduling of court appearances is done to maximize efficiency. Public defense cases are grouped together and review hearings are given their own calendar.
- The public defender has access to time-saving technology in the courtroom. Fife Municipal Court provides the public defender, without charge, a computer terminal with access to the JIS and JABS networks. This enables the public defender to get real-time docket, criminal history, and DOL information for each defendant.

Moreover, where a violation is alleged and proof of the violation by a preponderance of the evidence is available at the hearing, and the violation is stipulated to by the defendant, and the issue is resolved at the hearing, in such situations the public defense attorney need only consult briefly with the defendant about the probable outcome of the hearing and present any mitigating factors to the court; no outside preparation or lengthy review of the evidence is required. This situation is analogous to reviewing and advising defendants as standby counsel for an arraignment calendar. Therefore, the public defense attorney's general professional knowledge of caselaw, statutes and ordinances, and the policies of the Fife Municipal Court, will be sufficient in these situations to provide adequate representation.

Based on these factors, the City of Fife believes that the default weighted credits given to typical matters handled at sentence review hearings should be weighted at **0.17 credits per calendar hour**.

Where a violation is disputed or unresolved, the default weight of **0.33 credits** (1/3 of a case) shall apply.

8. Appeals, motions, trials, substitutions of counsel

- A. **Non-routine motions.** Notwithstanding the usual default weight assigned under these Policies, whenever a case requires a Public Defender to present any other non-routine motion requiring significant legal research, investigation, or substantial time-consuming activity, the default weight of the case shall be increased to at least 1 case.
- B. **Appeals or post-conviction motions.** When a Public Defender must file an appeal or other request for post-conviction relief that requires significant legal research, investigation, or substantial time-consuming activity, the default weight assigned to such a case shall be increased to at least 1 case.
- C. **Substitution of counsel.** Where a person has retained private counsel after appointment of the Public Defender, or another Public Defender has officially taken over from the original Public Defender assigned to the case, the weight to be assigned shall be determined based on the amount of work performed by the withdrawing Public Defender and the stage of the proceedings.
- D. **NOA filed but no other work performed.** *No weight* shall be assigned where a Public Defender has not yet filed a *Notice of Appearance*, or where no work has been performed by that attorney, other than appearing at arraignment, a review hearing, or some other type of proceeding, regardless of whether an NOA has been filed and regardless of whether the withdrawing Public Defender has technically been on the case at more than one hearing.
- E. **Negotiations but no briefing or written motions.** Where the withdrawing Public Defender has represented the person in substantive negotiations that resulted in setting a matter for motions, trial, or other evidentiary hearing other than an initial arraignment, *but no formal hearing on these issues has yet occurred or no written materials researched or presented to the court* on these issues, no additional weight shall be added to the default weight, absent special circumstances.
- F. **Motion hearings or briefs.** Where the withdrawing Public Defender has represented the person at an evidentiary hearing or other proceeding that requires significant legal research or the submittal of a written brief, such representation shall be weighed as at least 1 case.
- G. **Substitution at Readiness or after.** Where substitution occurs at trial readiness stage, or after, the withdrawing Public Defender's representation shall be counted as at least 1 case, *provided*, in situations where the Public Defender is not appointed until after a matter has been set for Readiness or Trial, and a different Public

Defender or private counsel takes over prior to the withdrawing Public Defender performing any substantive work on the case, such representations shall be given *no weight*.

9. Reappointments

- A. **Withdrawal required if previously appointed.** The default rule shall be that no weight is assigned for additional appearances or representation(s) by a Public Defender where the Public Defender has not previously withdrawn from representation on that case, *provided*, appeals and non-routine post-conviction motions shall be weighted as described in this policy.
- B. **Reappointment before case is resolved.** Where a Public Defender has withdrawn and is later reappointed before a case has been resolved, the total weight assigned shall not be increased, absent special circumstances, and this weight shall include all periods of representation up to the reappointment.
- C. **Post-resolution reappointment.** Where the Public Defender is reappointed to represent a client for routine matters, such as simple review hearings, even where the Public Defender is not the same person who was previously appointed to the case, the default weight for time spent at the hearing shall be applied.
- D. **Appeals and non-routine motions.** When a Public Defender is reappointed to handle an appeal or other request for post-conviction relief, or any other non-routine motion, and this appointment requires significant legal research, investigation, or substantial time-consuming activity, such appointments shall be weighted as at least 1 case.

10. If a Public Defender reaches caseload limit

- A. **Caseload calculated per calendar year.** The number of cases handled by a given Public Defender shall be based upon appointments made from January 1 through December 31 of each calendar year.
- B. **Duty to immediately notify court.** As soon as any attorney acting as a Public Defender for the City of Fife becomes aware that he or she has possibly exceeded the caseload limits and has potentially represented one or more persons since exceeding those limits, that attorney must notify the Court immediately and attempt to identify which indigent defendants may have been affected.

- C. Public Defender shall not handle new cases.** When a Public Defender has exceeded the caseload limits, that Public Defender shall no longer handle any new assignments in Fife Municipal Court for the duration of the calendar year. However, that Public Defender may continue to work on all cases assigned before reaching the caseload limit.
- D. Different Public Defender shall be assigned to affected cases.** If a Public Defender has exceeded the caseload limits, a Public Defender who has not exceeded the limits shall be substituted on each case to which the original Public Defender was assigned that is above the caseload limit.
- E. Effect upon resolved cases.** Except as otherwise required by court rule or case law, where the case that was handled in apparent violation of the caseload limits has already been resolved in a manner other than dismissal or amendment to a non-criminal violation, the Fife Municipal Court shall review the record and:
- (i) If the court finds, based on the record, that overwhelming evidence supports a finding of guilt beyond a reasonable doubt, no action shall be taken and the resolution shall stand undisturbed. This finding by the court shall not be meant to shield the Public Defender from any disciplinary action that the Washington State Bar Association may ultimately deem appropriate.
 - (ii) If the court finds, based on the totality of the circumstances, that significant concerns exist regarding the ability of the Public Defender to have provided effective assistance to a given defendant, the court shall have authority to vacate any conviction or other adverse finding and dismiss the matter, *provided*, absent compelling and convincing evidence to the contrary, it shall be presumed that effective assistance was provide to each defendant whose case was resolved prior to the Public Defender's exceeding of the caseload limits.

11. Monitoring compliance

A *Preamble* to the *Standards* was adopted by the Supreme Court in September 2012.⁶ This *Preamble* clarifies that the courts monitor compliance with the *Standards* by collecting and maintaining a record of quarterly compliance by each attorney who is working in that court as a Public Defender.

- A. **Attorney must certify compliance each quarter.** The *Standards* require an attorney to file quarterly, in every court in which the attorney has been appointed as counsel, “a signed certification of compliance with [these] Applicable Standards.” A model certification form is provided. The City shall require each certification form filed be in “substantially” the same format.
- B. **Attorney is responsible for compliance.** Although the *Standards* require the court to develop “protocols for procedures for receiving and retaining certifications[,]” the attorney is responsible for maintaining compliance because it is the attorney who must ultimately be able to show effective assistance was provided to each defendant.
- C. **Attorney shall keep accurate records.** To enable proper discussion of any issues of compliance that may arise between the court and the law firm contracted to provide public defense services, said firm shall maintain its own record of the number of cases assigned to each Public Defender on a month-to-month basis during the calendar year, as well as the weight assigned to each case. These records shall be made available to the court upon request.
- D. **Court shall retain Certifications.** The *Standards* do not define in what fashion, or for how long, the Certifications filed by a Public Defender must be kept by a court. Until the Washington Supreme Court issues such rules, the Fife Municipal Court shall adopt the following protocol:

⁶ “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 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 Wash.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.” *Preamble to New Standards for Indigent Defense* (2012).

- (i) The court shall establish a file for each Public Defender, into which each quarterly Certification shall be placed.
- (ii) These Certification Files shall be kept available for public inspection upon proper request.
- (iii) Although court records are exempt from the Public Records Act, the City shall treat these Certifications, *and these Certifications only*, as Public Records. By acting as a Public Defender in the Fife Municipal Court, whether monetarily compensated or not, each attorney is agreeing to allow said attorney's filed Certifications to be released to the Bar Association upon request, as well as to any other individual who requests copies of these Certifications.
- (iv) The court shall provide duplicate copies to the attorney who filed the Certification(s) at no cost upon request.
- (v) The Fife Municipal Court shall retain all filed Certifications for a period of five (5) calendar years.

E. Disputed case count. Each attorney acting as a Public Defender is ultimately responsible for monitoring compliance under these Policies. If the Public Defender and the City disagree on whether the Public Defender is about to exceed, or has exceeded, the caseload limits, that attorney shall not handle any additional cases in Fife Municipal Court for the balance of the calendar year and shall withdraw from any cases the City believes may be affected, pending additional review by the City.

12. Effect of Public Defender Contract Terms

- A. **These Policies supplement Contract.** The *Standards* described herein shall supplement the terms of any contract between the City of Fife and any law firm or individual contracted to provide public defense services for the City.
- B. **Contract terms generally control.** While the terms of any written contract between a law firm or attorney shall be presumed to control in matters of the implementation of, and compensation for, public defense services, situations may arise where the imperatives of the *Standards* appear to create a conflict with the terms of the contract. Pursuant to the *Preamble* of the *Standards*, which notifies attorneys that they must be aware of the “suitability of contracts that public defense attorneys may negotiate and sign,” as well as Standard 3.5.C, (case-weighting system “must not institutionalize systems or practices that fail to allow adequate attorney time for quality representation”), the City and the Public Defender shall interpret the terms of any contract for public defense services in a manner that is consistent with the *Standards*, and shall amend the terms of the contract to resolve any conflict-in-fact that is found to exist.

13. Attachments