

RESOLUTION NO. 02-2016

A RESOLUTION OF THE CITY OF BURLINGTON, WASHINGTON  
REPEALING RESOLUTION NO. 27-2012 AND ADOPTING NEW  
STANDARDS FOR THE DELIVERY OF PUBLIC DEFENDER SERVICES  
PURSUANT TO RCW 10.101.030

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

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

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

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

**WHEREAS**, the City Council of Burlington deems it to be in the public interest to proceed with the adoption and implementation of the standards as provided herein; **NOW, THEREFORE**

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

Section 1. Resolution No. 27-2012 is hereby repealed.

Section 2. The following standards are hereby adopted:

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

Washington State and federal courts. The City Council states its commitment to maintain and, when required, enhance the system which has been developed under the supervision of the Public Defense Supervisor. To that end, the City Council requests the Mayor to allow the Public Defense Contract Administrator full discretion to administer the system to the full extent permissible and consistent with the City's personnel practices and with the protections of Chapter 42.41 RCW Local Government Whistleblower Protection.

**1. DUTIES AND RESPONSIBILITIES.**

1.1 Public Defense Services shall be provided to all clients in a professional, skilled manner consistent with at least the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. To that end, the Washington State Bar Association's Standards for Indigent Defense Services are adopted by reference and are supplemented by the provisions of this Resolution. The Public Defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

1.2 Public Defense shall be provided to indigent clients whose eligibility has been determined by the City of Burlington 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 Burlington Municipal Court. Copies of each Public Defender's certification shall be provided to the City's designee, the Public Defense Contract Administrator.

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

**2. QUALIFICATIONS AND TRAINING.**

2.1 Every Public Defender performing services under contract with the City (herein "Public Defense or "Public Defender") shall satisfy the minimum requirements for

practicing law in the State of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State. Interns may assist in the provision of services so long as such interns comply with APR 9, and are trained and supervised by contract Public Defenders.

2.2 Public Defenders and Rule 9 interns (herein “intern” or “interns”) performing services under contract shall:

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

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

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

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

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

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

2.3 The City Attorney, City Prosecutor, Chief of Police and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services. Nothing herein shall be interpreted to prohibit the City Attorney, City Prosecutor or Chief of Police from performing the normal functions of his/her office, including by way of illustration, the drafting of contracts, ordinances and resolutions.

2.4 In addition to required continuing legal education (CLE) training, the contract for services shall provide for in-house training in accordance with these standards. Manuals will be developed to inform new attorneys of the rules and procedures of the Burlington Municipal Court and encourage attendance at courses that foster trial advocacy

skills. The Public Defender is encouraged to obtain and review professional publications and other media relating to criminal defense.

### **3. ADMINISTRATION, SUPPORT SERVICES AND INFRASTRUCTURE.**

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

3.1.1 Travel, telephones, law library and/or electronic research capabilities, financial accounting, case management systems, computers, word processing equipment and software, office space and supplies. Proposals for contracts shall be evaluated to address the training of attorneys and staff (see Section 2.4 above) and provide for adequate staffing and other costs associated with the day to day management of a law office.

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

3.2 The Public Defender shall provide adequate staffing. An adequate staff includes provision for routine investigative services, legal assistance, accounting services, case management services and/or programs. The contract shall provide access, through application to the Municipal Court to the services of a social worker, mental health professional, expert witness, translating services outside of the courtroom and any other resources approved by the Court.

3.3 Public defense shall be provided in accord with the Decision entered by the Honorable Robert Lasnik in Case No. C11-1100 RSL ("Decision") as supplemented by the reports of the Public Defense Supervisor. By way of illustration and not limitation, Public Defenders shall keep detailed contemporaneous records of the work performed in tenth-of-an-hour increments, and provide all files, documents, records and reports requested or required by the Public Defense Supervisor consistent with the Decision.

### **4. EVALUATION AND MONITORING.**

4.1 Contracts and proposals to contract with the City for Public Defense Services shall include a provision for a case reporting system and information management

system. Such systems shall have the capability to provide monthly reports to the City and to the Office of Court Administration regarding the case loads generated under the contract for each attorney and intern providing services under the contract.

#### 4.2 Complaints.

4.2.1 A procedure has been established under these auspices of the Public Defense Supervisor for the receipt, review and administration of complaints. Said procedure shall be maintained in compliance with the Decision, and shall be broadly disseminated to the public.

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

4.2.3 While under court supervision, the Public Defense Supervisor shall review the disposition of complaints under his/her purview in keeping with the Decision and the process developed with the guidance of the Public Defense Supervisor. Thereafter, the Public Defense Contract Administrator shall administer the complaint process.

4.2.4 The Attorney shall maintain client complaints received in a log as well as in the client's file and shall follow up on complaints within three (3) court days. Copies of the complaint log shall be provided to the Cities on a quarterly basis or upon its request on the form developed by the Cities and its Public Defense Supervisor. The Attorney shall cooperate, to the full extent consistent with preservation of the attorney-client privilege and the protective order in the underlying Decision with review of Complaints by the Cities, and the Public Defense Supervisor or her successor, whether the Public Defense Contract Administrator or other outside resource contracted with by the City.

4.3 Following the conclusion of the term of the Public Defense Supervisor, the City states its intent to seek the services of an independent and duly qualified resource to periodically assess the performance of the Public Defender and Conflict Counsel. Assessment shall occur at least annually. These services will supplement the duties of the Public Defense Contract Administrator and be insulated from any inappropriate influence of the police and prosecutorial functions of the City.

### **5. CASE LOAD LIMITS.**

5.1 The case load of the Public Defender shall consist of misdemeanors and RALJ appeals to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation. When the Burlington Municipal Court reviews certification by a Public Defender, the City respectfully requests that the following standards be employed. If the Court, in its discretion, determines that a different standard should apply, the City requests that it be notified so that these standards may, when appropriate, be revised.

5.2 The case load for each individual Public Defender and Conflict Counsel should not exceed four hundred (400) unweighted cases per year, determined in accordance with the case count methodology established by Standard 3.3, Washington Supreme Court CrR 3.1. Public Defenders and Conflict Counsel are referred to resources such as the Washington Office of Public Defense for guidance on how to calculate cases and make proportional adjustments for outside practice and attendance at calendars and other docket appearances. The methodology referenced below shall apply to determining contract payment for assigned cases.

5.2.1 Contracts for service by the Public Defender and Conflict Counsel shall assure that counsel are compensated at a rate commensurate with their training and experience. The contracts will provide for compensation for service rendered based either upon hourly rate or upon reasonable estimates of the number of cases assigned annually. Adequate provision for compensation shall be made for administrative tasks required under the contract, for initial work done or cases dismissed by the prosecutor, and for legal services and administrative tasks performed after the termination of a contract. Contracts shall contain a provision allowing a Public Defender paid on the basis of anticipated case load to request additional payment for cases of unusual complexity or length as well as adjustments in the event of significant increases or decreases in case loads. Approval of such additional payment shall not be unreasonably withheld.

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

out of a separate incident, shall be counted by the Public Defender as a new case.

5.2.3 When the Public Defender is assigned to represent groups of clients at a first appearance or arraignment calendar without an expectation of further continuing representation for cases, the contract shall provide for payment equal to 0.22 case credit for each hour spent preparing for and appearing at such calendars. Assignments to represent groups of clients in routine review hearing calendars in which there is no potential for the imposition of sanctions shall similarly result in payment in compensation for the work performed and the reduction of the attorney's case loads on a proportionate basis for the time spent in preparation and appearance at such calendars. This provision shall not apply to Conflict Counsel when the contract does not require such routine calendar coverage.

5.2.4 Post-conviction cases are subsequent reappointments as a new case to the Public Defender. In the event of termination of a contract for public defense services, and to assist in the orderly transition of public defense services to a new contractor, the former Public Defender shall be paid by the hour at the hourly rate paid to conflict counsel for preparation and appearances in continuing representation of a client. This provision shall not apply to contracts terminated for cause and the terminated attorney's case load shall be reassigned to new counsel as a new case.

5.3 The case load limit for approved interns shall be twenty-five percent (25%) of those established by these policies.

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

5.5 The maximum case load for a particular attorney shall similarly be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more than routine

investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

5.6 If a Public Defender or assigned counsel is carrying a case load consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed case load of felonies and misdemeanors, the attorney's case load shall be adjusted proportionally to determine a full case load. If the contract or assigned counsel also maintains a private law practice, the maximum case load shall be adjusted proportionately based upon the percentage of time that the lawyer devotes to public defense with the City and other agencies. *See* §5.2 and OPD guidance.

5.7 Monthly reports on forms developed by the City shall be provided by the Public Defender and shall identify the number of cases assigned, the case count year-to-date, cases which the Public Defender has been assigned a higher case count, and other data points identified by the City and the Public Defense Supervisor or Public Defense Contract Administrator as required to assess the quality of services provided.

**6. COMPENSATION.** The City of Burlington is a public agency whose revenues and resources are limited by statute, the constitution, and our local economy. The City has an obligation to obtain quality legal representation to indigent defendants at a reasonable price that takes into consideration the resources of the City, and the needs of its citizens. Within those inherent limitations, the Public Defense Services afforded by contract shall ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience and the typical rates paid in the Skagit County legal community for similar services. For conflict and other assigned counsel, reasonable compensation shall also be provided. In each case, compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned case load. Due to the limited jurisdiction of the municipal/district court, misdemeanors and RALJ misdemeanor appeals pursuant to Superior Court constitute the assigned case load under contract. Contracted and assigned counsel shall be compensated their expenses. *See* §3.2

6.1 The contract shall provide for extraordinary compensation in the event that a particular case requires an extraordinary amount of time and preparation. The



conditions under extraordinary fees may be charged will be defined within any contract.

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

6.3 The City's contract with assigned or Conflict Counsel may provide for payment by voucher. Assigned or Conflict Counsel shall be paid by the case in 1/10 hourly increments. In the event that case limits are or may be exceeded, and the assignment of additional cases requires the Public Defender to add staff or increase training, administrative and other overhead charges, the City shall enter into good faith negotiation with the Public Defender to provide for reasonable compensation that assures the provision of quality representation to indigent defendants. Contracts with assigned or conflict counsel shall include reimbursement for establishment of a reporting system to prepare reports required by the City on a monthly or periodic basis and provide adequate compensation for the preparation of such reports.

## **7. EXPERTS, INVESTIGATION, AND OTHER COSTS.**

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

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

7.3 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Normally, a ratio of one investigator to four attorneys shall be provided. Contracts for Public Defense Services shall include routine investigative services as a part of overhead included in the contract compensation. Extraordinary investigative expenses shall be paid upon application to and approval by the Court.

## **8. TERMINATION AND REMOVAL.**

8.1 Termination of the contract shall occur only for "good cause." Good

cause shall include the failure of the contract Public Defender to render adequate representation to clients, the willful disregard of the rights and best interests of the client, and the willful disregard of the 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 written notice, to cure any technical contract violations that do not impair the provision of quality representation to the indigent client.

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

## **9. SUBCONTRACTORS, SUBSTITUTION, AND CONFLICT COUNSEL.**

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

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

9.3 Conflict Counsel shall adhere to the standards established by this resolution, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the guidance provided by the Washington Supreme Court and the resources referenced in this Resolution.

9.4 Conflict Counsel may be assigned:

9.4.1 by the Burlington Municipal Court upon the request of the Public Defender in conjunction with assigned City staff;

9.4.2 in accordance with the terms of a joint contract with the Public

Defender and Conflict Counsel, or

9.4.3 pursuant to a separate contract.

**10. SUPERVISION, MONITORING AND EVALUATION OF ATTORNEYS.**

Candidates for Public Defender services are encouraged, but not required, to comply with the provisions of Standard 10 and 11 as established by the Washington Bar Association, Standards for Indigent Defense Services, approved June 3, 2011. The City recognizes that smaller firms providing Public Defense Services may provide quality service through experienced practitioners. Larger contracting agencies should make provision for supervision, monitoring and evaluation in accordance with Bar Association Standards 10 and 11.

**11. UPDATE AND EVALUATION.**

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

Section 3. The City Clerk is directed to provide a certified copy of the Standards to the Presiding Judge of the Burlington Municipal Court.

Section 4. **EFFECTIVE DATE.** The provisions of this resolution shall be effective upon adoption, except as expressly provided herein.

**CITY OF BURLINGTON**

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Steve Sexton, Mayor

ATTEST:

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Crystil Wooldridge, Finance Director

APPROVED AS TO FORM:

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Leif Johnson, City Attorney

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