

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

ORDINANCE NO. 2021- 012

AN ORDINANCE AMENDING KITTITAS COUNTY CODE CHAPTER 2.09 REGARDING DELIVERY OF PUBLIC DEFENSE SERVICES TO REFLECT CHANGES IN THE WSBA STANDARDS

- Whereas:** Kittitas County Code Chapter 2.09 was enacted to implement the statutorily mandated standards of RCW 10.101.030; and
- Whereas:** The cited RCW refers to standards endorsed by the Washington State Bar Association (WSBA) as guidelines for local legislative bodies in adopting local standards and practices; and
- Whereas:** The Washington State Bar Association has revised those standards effective May 21, 2021; and
- Whereas:** The Board of County Commissioners have determined it is in the best interest of the public to update Kittitas County Code Section 2.09 to reflect this change; and

NOW, THEREFORE, BE IT ORDAINED, the Board of County Commissioners, after due deliberation and in the best interest of the public, adopt by reference the majority of the “Standards for Indigent Defense Services” into the Kittitas County Code ;

BE IT ALSO ORDAINED, Kittitas County Code Chapter 2.09 is hereby amended, and shall read as follows (additions to this text are shown by underline and deletions by ~~strikeout~~):

Sections

- 2.09.010 Standards of representation.
- 2.09.020 Selection of attorneys.
- 2.09.030 Duties and responsibilities of counsel.
- ~~2.09.040 Case load limits and types of cases.~~
- ~~2.09.050 Costs of investigative and expert or other services.~~
- ~~2.09.060 Reports of attorney activity and vouchers.~~
- ~~2.09.070 Training.~~
- ~~2.09.080 Substitution of attorneys or assignment of contracts.~~
- ~~2.09.090 Minimum qualifications of attorneys.~~
- ~~2.09.100 Representation in specific classes of cases.~~
- ~~2.09.110 Disposition of client complaints.~~
- ~~2.09.120 Cause for removal of attorney.~~
- 2.09.~~130~~040 Non-discrimination.

2.09.~~1050~~ Effective date and expiration date.

2.09.~~1060~~ Severability.

2.09.010 Standards of representation. Kittitas County hereby adopts standards for the delivery of public defender services consistent with RCW 10.101.030 and the Washington ~~Defender State Bar Association Standards for Public Indigent Defense Services as revised May 21, 2021, except for Standards 18 and 19, and as amended or revised thereafter.~~ Kittitas County is rural in nature, has two sitting Superior Court judges, a full-time district court judge serving the Lower Kittitas County District Court and a part-time district court judge serving the Upper Kittitas County District Court; and ~~appoints attorneys from a list of qualified, interested, and dedicated attorneys for cases in Superior Court and Upper Kittitas County District Court and contracts with interested attorneys who have applied to serve by contract in Lower Kittitas County District each of these Courts.~~ Therefore, the standards of the Washington State Bar Association referenced above are hereby adopted by reference as if fully set out herein. ~~set forth in this rule have been tailored to the assigned counsel model for delivery of public defender services.~~ (Ord. 2021-____, 2021)

2.09.020 Selection of attorneys. Attorneys appointed for indigent defense shall be selected solely by the court, consistent with the terms of the contracts referenced in 2.09.010. (Ord. 2008-12, 2008)

2.09.030 Duties and responsibilities of counsel. Defense services shall be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable ~~Washington state bar association~~ State Bar Association standards, the Rules of Professional Conduct, case law and court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client. (Ord. 2021-____, 2021)

~~2.09.040 Case load limits and types of cases. The caseload of court appointed attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Assigned counsel should not accept a workload that, by reason of its excessive size, interferes with the rendering of quality representation. (Ord. 2008 12, 2008) Repealed (Ord. 2021-____, 2021)~~

~~2.09.050 Costs of investigative and expert or other services. Reasonable compensation for investigative, expert, or other services necessary for preparation and presentation of the defense case shall be provided upon motion pursuant to CrR 3.1(f) or CrRLJ 3.1(f). Fees for investigative, expert, or other services should be maintained and allocated from funds separate from those provided for defender services. The defense should be free to retain said services of its choosing. (Ord. 2008 12, 2008) Repealed (Ord. 2021-____, 2021)~~

~~2.09.060 Reports of attorney activity and vouchers. The court appointed attorney shall maintain a case reporting and management information system which includes number and type of cases, attorney hours and disposition for each case served at public expense. An annual report shall be filed with the presiding judges of the respective courts summarizing the number and type of cases, the attorney hours spent on each case, and dispositions thereof. Such system shall be maintained independently from client files so as to disclose no privileged information. A standardized voucher form provided by the court shall be used by court appointed attorneys seeking payment upon completion of a case. Each attorney shall provide annually to the Presiding Superior Court Judge a certification documenting their compliance with the requirements set forth in Section 2.09.090. (Ord. 2008-12, 2008) Repealed (Ord. 2021-____, 2021)~~

~~2.09.070 Training. Attorneys providing public defense services should participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice. Attorneys in dependency practices should attend training programs in these areas. Every attorney providing counsel to indigent accused should have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and tapes. (Ord. 2008-12, 2008) Repealed (Ord. 2021-____, 2021)~~

~~2.09.080 Substitution of attorneys or assignment of contracts. The court appointed attorney should not sub-contract with another firm or attorney to provide representation, except referrals authorized by contract in order to (a) comply with caseload limitations, or (b) resolve conflicts. To the extent that the court appointed attorney does refer cases to maintain caseload limitations or for any other reason authorized by contract, the referral shall be only to an attorney who the court has determined qualifies to serve as court appointed counsel under these standards for public defense services. (Ord. 2008-12, 2008) Repealed (Ord. 2021-____, 2021)~~

~~2.09.090 Minimum qualifications of attorneys. In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, court appointed attorneys 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) complete seven hours of continuing legal education approved by the Washington State Bar Association Continuing Legal Education Department in the field of criminal law or trial advocacy within each calendar year. (Ord. 2008-12, 2008) Repealed (Ord. 2021-____, 2021)~~

~~2.09.100 Representation in specific classes of cases. In order to serve in each of the following classes of cases, court appointed attorneys should first meet certain requirements: 1. Death Penalty Representation. Each attorney acting as lead counsel in a death penalty case should meet the following requirements: a. The minimum requirements set forth in Section 2.09.090;~~

and b. At least five years criminal trial experience; and c. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and d. Have served as lead or co counsel in at least one jury trial in which the death penalty was sought; and e. Have completed at least one death penalty defense seminar within the previous two years. 2. Adult Felony Cases—Class A. Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 should meet the following requirements: a. The minimum requirements set forth in Section 2.09.090; and b. Either: i. has served two years as a felony level prosecutor; or ii. has served two years as a public defender defending felony level cases; or iii. has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in five felony cases that have been submitted to a jury. 3. Adult Felony Cases—Class B Violent Offense or Sexual Offense. Each attorney representing a defendant accused of a Class B violent offense or sexual offense as defined in RCW 9A.20.020 should meet the following requirements: a. The minimum requirements set forth in Section 2.09.090; and b. Either: i. has served one year as a felony level prosecutor; or ii. has served one year as a public defender defending felony level cases; or 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. 4. 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 (c) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing should meet the following requirements: a. The minimum requirements set forth in Section 2.09.090, and b. Either: i. has served one year as a prosecutor; or ii. has served one year as a public defender; or 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 c. Each attorney should be accompanied at his or her first felony trial by a supervisor, or another otherwise qualified public defender. 5. Juvenile Cases—Class A. Each attorney representing a juvenile accused of a Class A felony should meet the following requirements: a. The minimum requirements set forth in Section 2.09.090, and b. Either: i. has served one year as a prosecutor; or ii. has served one year as a public defender; or iii. has been trial counsel alone of record in five juvenile Class B and Class C felony trials; and c. Each attorney should be accompanied at his or her first juvenile trial by a supervisor, or another otherwise qualified public defender. 6. Juvenile Cases—Classes B and C. Each attorney representing a juvenile accused of a Class A or C felony should meet the following requirements: a. The minimum requirements set forth in Section 2.09.090, and b. Either: i. has served one year as a prosecutor; or ii. has served one year as a public defender; or iii. has been trial counsel alone of record in five misdemeanor cases brought to a final resolution; and c. Each attorney should be accompanied at his or her first juvenile trial by a supervisor, or another otherwise qualified public defender. 7. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a gross misdemeanor or condition of confinement, should meet the requirements as outlined in Section 2.09.090. 8. Dependency Cases. Each

~~attorney representing a client in a dependency matter shall meet the following requirements: a. The minimum requirements as outlined in Section 2.09.090; and b. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation. (Ord. 2008-12, 2008) Repealed (Ord. 2021-____, 2021)~~

~~2.09.110 Disposition of client complaints. Client complaints should first be directed to the public defender who provided or is providing representation. If the client feels that he or she has not received an adequate response, the public defender shall forward the complaint and any response by the public defender to the judicial officer presiding over the case. The judicial officer shall review the complaint and take any action deemed appropriate by the judicial officer, including re-assigning the case to another public defender. The attorney and the reviewing judicial officer shall reply to the complaint within one week of receipt of the complaint or as soon as practicable thereafter. (Ord. 2008-12, 2008) Repealed (Ord. 2021-____, 2021)~~

~~2.09.120 Cause for removal of attorney. Termination of an attorney's assignment should only be for cause. Good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of the standards herein addressed. The representation in an individual case establishes an inviolable attorney-client relationship. Removal of counsel from representation therefore normally should not occur over the objection of the attorney and the client. (Ord. 2008-12, 2008) Repealed (Ord. 2021-____, 2021)~~

2.09.130040 Non-discrimination. Neither the court, in its selection of an attorney to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or handicap. Both the court and the attorney shall comply with all federal, state, and local nondiscrimination requirements. (Ord. 2008-12, 2008) Renumbered (Ord. 2021-____, 2021)

2.09.~~1050~~ Effective date and expiration date. This ordinance shall take effect immediately and shall not expire until formally amended or repealed by legislative action. Renumbered (Ord. 2021-____, 2021)

2.09.~~1060~~ Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provisions to other persons or circumstances is not affected. Renumbered (Ord. 2021-____, 2021)

BE IT ALSO ORDAINED, the Information Technology Department is charged with incorporating and updating the amendment authorized herein on the Kittitas County web page.

BE IT FURTHER ORDAINED, the Prosecuting Attorney's Office is charged with correcting any scrivener's errors arising out of the amendment process. No further authorization will be needed from the Kittitas County Board of Commissioners for the Prosecuting Attorney's Office to effect correction of scrivener's errors relating to this Ordinance.

ADOPTED this 21st day of September 2021, at Ellensburg, Washington.

**BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON**



Brett Wachsmith, Chair



Laura Osiaacz, Vice-Chair



Cory Wright, Commissioner

APPROVED AS TO FORM:

Douglas R. Mitchell, Deputy Prosecuting Attorney



- Clerk of the Board- Julie Kjorsvik
- Deputy Clerk of the Board- Mandy Buchholz