THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE PROPOSED AMENDMENTS TO DEATH PENALTY RELATED COURT RULES: CrR 3.1 STDS—STANDARDS FOR INDIGENT DEFENSE, CrR 3.2—RELEASE OF ACCUSED, CrR 3.4(b)—PRESENCE OF THE DEFENDANT, CrR 6.1(b)—TRIAL BY JURY OR BY THE COURT, CrR 6.4(e)(1)—CHALLENGES, CrRLJ 2.2(c)—WARRANT OF ARREST OR SUMMONS UPON COMPLAINT, CrRLJ 3.1 STDS—STANDARDS FOR INDIGENT DEFENSE, JuCR 9.2 STDS—STANDARDS FOR INDIGENT DEFENSE, CR 80(b) COURT REPORTERS, RAP 4.2—DIRECT REVIEW OF SUPERIOR COURT DECISION BY SUPREME COURT, RAP 12.5(c)—MANDATE, RAP 16.1(h)—PROCEEDINGS TO WHICH TITLE APPLIES, RAP 16.3(c)—PERSONAL RESTRAINT PETITION—GENERALLY, RAP 16.5(b)—PERSONAL RESTRAINT PETITION—WHERE TO SEEK RELIEF, RAP 16.19—PREPARATION OF REPORT OF PROCEEDINGS IN CAPITAL CASES, RAP 16.20—TRANSMITTAL OF JURY QUESTIONNAIRES AND CLERK'S PAPERS IN CAPITAL CASES, RAP 16.21—CLERK'S CONFERENCE IN CAPITAL CASES, RAP 16.22—FILING OF BRIEFS IN CAPITAL CASES, RAP 16.23—ORAL ARGUMENT ON APPEAL IN CAPITAL CASES, RAP 16.24—STAY OF EXECUTION IN CAPITAL CASES, RAP 16.25—APPOINTMENT OF COUNSEL ON PERSONAL RESTRAINT PETITION IN CAPITAL CASES, RAP 16.26—PERSONAL RESTRAINT PETITIONS IN CAPITAL CASES—DISCOVERY, RAP 16.27—PERSONAL RESTRAINT PETITION IN CAPITAL CASES—INVESTIGATIVE, EXPERT, AND OTHER SERVICES, SPRC 1—SCOPE OF RULES, SPRC 2—APPOINTMENT OF COUNSEL, SPRC 3—COURT REPORTERS: FILING OF NOTES, SPRC 4 - DISCOVERY—SPECIAL SENTENCING PROCEEDING, SPRC 5—MENTAL EXAMINATION OF DEFENDANT, SPRC 6—PROPORTIONALITY QUESTIONNAIRES, SPRC 7—DESTRUCTION OF RECORDS, EXHIBITS, AND STENOGRAPHIC NOTES

ORDER

NO. 25700-A- 1265

The Washington State Supreme Court, having recommended the expeditious adoption of the proposed amendments to CrR 3.1 STDs—Standards for Indigent Defense, CrR 3.2—Release of Accused, CrR 3.4(b)—Presence of the Defendant, CrR 6.1(b)—Trial by Jury or by the Court, CrR 6.4(e)(1)—Challenges, CrRLJ 2.2(c)—Warrant of Arrest or Summons Upon Complaint, CrRLJ 3.1 STDs—Standards for Indigent Defense, JuCR 9.2 STDs—Standards for Indigent Defense, CR 80(b) Court Reporters, RAP 4.2—Direct Review of Superior Court Decision by Supreme Court, RAP 12.5(c)—Mandate, RAP 16.1(h)—Proceedings to Which Title Applies, RAP 16.3(c)—Personal Restraint Petition—Generally, RAP 16.5(b)—Personal Restraint Petition—Where to Seek Relief, RAP 16.19—Preparation of Report of Proceedings in Capital Cases, RAP 16.20—Transmittal of Jury Questionnaires and Clerk's Papers in Capital Cases, RAP 16.21—Clerk's Conference in Capital Cases, RAP 16.22—Filing of Briefs in Capital Cases, RAP 16.23—Oral Argument on Appeal in Capital Cases, RAP 16.24—Stay of Execution in Capital Cases, RAP 16.25—Appointment of Counsel on Personal Restraint Petition in Capital Cases, RAP 16.26—Personal Restraint Petitions in Capital Cases—Discovery, RAP 16.27—Personal Restraint Petition in Capital Cases—Investigative, Expert, and Other Services, SPRC 1—Scope of Rules, SPRC 2—Appointment of Counsel, SPRC 3—Court Reporters: Filing of Notes, SPRC 4 - Discovery—Special Sentencing Proceeding, SPRC 5—Mental Examination of Defendant, SPRC 6—Proportionality Questionnaires, SPRC 7—Destruction of Records, Exhibits, and Stenographic Notes, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2020.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2020. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 6th day of November, 2019.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Changes to the Superior Court Criminal Rules (CrRs), Superior Court Civil Rule (CR), Courts of Limited Jurisdiction Criminal Rules (CrRLJs), Rules on Appellate Procedure, Special Proceeding Rules —Criminal (SPRCs), and Juvenile Court Rule (JuCR)

Submitted by Washington State Supreme Court

A. Name of Proponent: **Washington State Supreme Court**

B. Spokesperson: **Chief Justice Mary E. Fairhurst**

C. Purpose: **The purpose of these rule amendments is to conform with the court's holding in *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018) which held that the death penalty is unconstitutional as currently administered.**

CrR 3.1 STDS - Standards for Indigent Defense
Standard 3.4 - Removes reference to death penalty caseload limit
Standard 14.2 – Removes reference to death penalty representation, SPRC 2 and re-numbers the rest of the standard.
Standard 14.3 – Removes reference to requirements for attorneys who handling a death penalty appeal.

CrR 3.2 – RELEASE OF THE ACCUSED
Removes the reference to release in capital cases and re-numbers the remainder of the rule.

CrR 3.4(b) – PRESENCE OF THE DEFENDANT
Removes the reference to death penalty prosecutions.

CrR 6.1(b) – TRIAL BY JURY OR BY THE COURT
Removes the reference to the distinction between capital and noncapital cases in the number of jurors subsection.

CrR 6.4(e)(1) – CHALLENGES
Removes reference to prosecutions for capital cases in peremptory challenges subsection.

CrRLJ 2.2(c) – WARRANT OF ARREST OR SUMMONS UPON COMPLAINT
Removes reference to capital offense in the requisites of a warrant subsection.

CrRLJ 3.1 STDS – Standards for Indigent Defense
Standard 3.4 - Removes reference to death penalty caseload limit
Standard 14.2 – Removes reference to death penalty representation, SPRC 2 and re-numbers the rest of the standard.
Standard 14.3 – Removes reference to requirements for attorneys who handling a death penalty appeal.

JuCR 9.2 STDS - Standards for Indigent Defense
Standard 3.4 - Removes reference to death penalty caseload limit
Standard 14.2 – Removes reference to death penalty representation, SPRC 2 and re-numbers the rest of the standard.
Standard 14.3 – Removes reference to requirements for attorneys who handling a death penalty appeal.

CR 80(b) Court Reporters
Removes reference to SPRC 3 regarding capital cases.

RAP 4.2 – DIRECT REVIEW OF SUPERIOR COURT DECISION BY SUPREME COURT
Removes subsection (6) which refers to death penalty cases.

RAP 12.5(c) – MANDATE
Removes language that refers to cases in which the death penalty is to be imposed and removes subsection (3).

RAP 16.1(h) – PROCEEDINGS TO WHICH TITLE APPLIES
Removes cross-reference to RAP 16.19 – 16.27 which apply to capital cases.

RAP 16.3(c) – PERSONAL RESTRAINT PETITION – GENERALLY
Removes references to jurisdiction of personal restraint proceedings in death penalty cases.

RAP 16.5(b) – PERSONAL RESTRAINT PETITION-WHERE TO SEEK RELIEF
Removes filing requirement of personal restraint petition in the Supreme Court in death penalty cases and renumbers the remainder of the rule.

The following RAPs are removed in their entirety because they deal only with procedures to be followed on appeal in death penalty cases.

RAP 16.19 – PREPARATION OF REPORT OF PROCEEDINGS IN CAPITAL CASES

RAP 16.20 – TRANSMITTAL OF JURY QUESTIONNAIRES AND CLERK'S PAPERS IN CAPITAL CASES

RAP 16.21 – CLERK'S CONFERENCE IN CAPITAL CASESD

RAP 16.22 – FILING OF BRIEFS IN CAPITAL CASE

RAP 16.23 – ORAL ARGUMENT ON APPEAL IN CAPITAL CASES

RAP 16.24 – STAY OF EXECUTION IN CAPITAL CASES

RAP 16.25 – APPOINTMENT OF COUNSEL ON PERSONAL RESTRAINT PETITION IN CAPITAL CASES

RAP 16.26 – PERSONAL RESTRAINT PETITIONS IN CAPITAL CASES – DISCOVERY

RAP 16.27 – PERSONAL RESTRAINT PETITION IN CAPITAL CASES – INVESTIGATIVE, EXPERT, AND OTHER SERVICES

The following SRPCs are removed in their entirety because they deal only with special procedures to be followed on appeal in death penalty cases.

SPRC 1 – SCOPE OF RULES

SPRC 2 – APPOINTMENT OF COUNSEL

SPRC 3 – COURT REPORTERS: FILING OF NOTES

SPRC 4 – DISCOVERY – SPECIAL SENTENCING PROCEEDING

SPRC 5 – MENTAL EXAMINATION OF DEFENDANT

SPRC 6 – PROPRITIONALITY QUESTIONNAIRES

SPRC 7 – DESTRUCTION OF RECORDS, EXHIBITS, AND STENOGRAPHIC NOTES

D. Hearing: No hearing is requested.

E. Expedited Consideration: Expedited consideration is being requested.

CrR 3.1
STANDARDS FOR INDIGENT DEFINSE

Preamble [Unchanged.]

Standard 1 – 2 [Unchanged.]

Standard 3. Caseload Limits and Types of Cases

Standard 3.1 – 3.3 [Unchanged.]

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.

Standard 3.5. [Unchanged.]

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. – B. [Unchanged.]

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 – 13 [Unchanged.] Responsibility of Expert Witnesses

Standard 14. Qualifications of Attorneys

Standard 14.1. [Unchanged.]

Standard 14.2. Attorneys' qualifications according to severity or type of case[1]:

A. (Reserved.) ~~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.

~~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. – P. [Unchanged.]

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.

~~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.~~

~~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.~~

Standards 15-18 [Unchanged.]

CERTIFICATION OF COMPLIANCE [Unchanged.]

For criminal and juvenile offender cases, 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.

SEPARATE CERTIFICATION FORM [Unchanged.]

CrR 3.2
RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release ~~in Noncapital Cases~~.

Any person~~, other than a person charged with a capital offense~~, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1)-(2) [Unchanged.]

(b) -(f) [Unchanged.]

~~**(g) Release in Capital Cases.** Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.~~

(g~~h~~) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(h~~i~~) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(i~~j~~) Review of Conditions.

(1) - (2) [Unchanged.]

(j~~k~~) Amendment or Revocation of Order.

(1) - (2) [Unchanged.]

(k~~l~~) Arrest for Violation of Conditions.

(1) - (2) [Unchanged.]

(l~~m~~) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(m~~n~~) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(n~~o~~) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

Comment [Unchanged.]

CrR 3.4
PRESENCE OF THE DEFENDANT

(a) [Unchanged.]

(b) Effect of Voluntary Absence. ~~In prosecutions for offenses not punishable by death,~~ tThe defendant's voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(c) – (e) [Unchanged.]

Comment [Unchanged.]

CrR 6.1
TRIAL BY JURY OR BY THE COURT

(a) [Unchanged.]

(b) Number of Jurors. Unless otherwise provided by these rules, the number of persons serving on a jury shall be 12, not including alternates. If prior to trial ~~on a noncapital case~~ all defendants so elect, the case shall be tried by a jury of not less than six, or by the court.

(c) - (d) [Unchanged.]

Comment [Unchanged.]

CrR 6.4
CHALLENGES

(a) - (d) [Unchanged.]

(e) Peremptory Challenges.

(1) Peremptory Challenges Defined. A peremptory challenge is an objection to a juror for which there is no reason given, but upon which the court shall exclude the juror. ~~In prosecutions for capital offenses the defense and the state may challenge peremptorily 12 jurors each; in~~ prosecution for offenses punishable by imprisonment in the state Department of Corrections 6 jurors each; in all other prosecutions, 3 jurors each. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the number of challenges provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant.

(2) [Unchanged.]

Comment [Unchanged.]

CrRLJ 2.2
WARRANT OF ARREST OR SUMMONS
UPON COMPLAINT

(a) – (b) [Unchanged.]

(c) Requisites of a Warrant. The warrant shall be in writing and in the name of the charging jurisdiction, shall be signed by the judge or clerk with the title of that office, and shall state the date when issued. It shall specify the name of the defendant, or if his or her name is unknown, any name or description by which he or she can be identified with reasonable certainty. The warrant shall specify the offense charged against the defendant and that the court has found that probable cause exists to believe the defendant has committed the offense charged and shall command the defendant be arrested and brought forthwith before the court issuing the warrant. ~~If the offense is not a capital offense, t~~The court shall set forth in the order for the warrant, bail and/or other conditions of release.

(d) - (g) [Unchanged.]

CrRLJ 3.1
STANDARDS FOR INDIGENT DEFINSE

Preamble [Unchanged.]

Standard 1 – 2 [Unchanged.]

Standard 3. Caseload Limits and Types of Cases

Standard 3.1 – 3.3 [Unchanged.]

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.

Standard 3.5. [Unchanged.]

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. – B. [Unchanged.]

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*)

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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).

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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 – 13 [Unchanged.] Responsibility of Expert Witnesses

Standard 14. Qualifications of Attorneys

Standard 14.1. [Unchanged.]

Standard 14.2. Attorneys' qualifications according to severity or type of case[1]:

A. (Reserved.) ~~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.

~~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. – P. [Unchanged.]

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.

~~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.~~

~~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.~~

Standards 15-18 [Unchanged.]

CERTIFICATION OF COMPLIANCE [Unchanged.]

For criminal and juvenile offender cases, 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.

SEPARATE CERTIFICATION FORM [Unchanged.]

JuCR 9.2
STANDARDS FOR INDIGENT DEFENSE

Preamble [Unchanged.]

Standard 1 – 2 [Unchanged.]

Standard 3. Caseload Limits and Types of Cases

Standard 3.1 – 3.3 [Unchanged.]

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.

Standard 3.5. [Unchanged.]

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. – B. [Unchanged.]

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 – 13 [Unchanged.] Responsibility of Expert Witnesses

Standard 14. Qualifications of Attorneys

Standard 14.1. [Unchanged.]

Standard 14.2. Attorneys' qualifications according to severity or type of case[1]:

A. (Reserved.) ~~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.

~~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. – P. [Unchanged.]

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.

~~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.~~

~~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.~~

Standards 15-18 [Unchanged.]

CERTIFICATION OF COMPLIANCE [Unchanged.]

For criminal and juvenile offender cases, 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.

SEPARATE CERTIFICATION FORM [Unchanged.]

CR 80
COURT REPORTERS

(a) [Unchanged.]

(b) Electronic Recording. ~~Except as provided in SPRC 3 regarding capital cases, a~~Any civil or criminal proceedings may be recorded electronically in lieu of or supplementary to causing shorthand or stenographic notes thereof to be taken. The use of such devices shall rest within the sole discretion of the court. If proceedings are recorded electronically, the judicial officer shall assure that all case participants identify themselves for the record.

(c) [Unchanged.]

RAP 4.2
DIRECT REVIEW OF SUPERIOR COURT DECISION BY SUPREME COURT

(a) Type of Cases Reviewed Directly. A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases:

(1) – (5) [Unchanged.]

~~(6) *Death Penalty.* A case in which the death penalty has been decreed.~~

(b) - (e) [Unchanged.]

References [Unchanged.]

RAP 12.5
MANDATE

(a) – (b) [Unchanged.]

(c) When Mandate Issued by Supreme Court.

(1) The clerk of the Supreme Court issues the mandate for a Supreme Court decision terminating review upon stipulation of the parties that no motion for reconsideration will be filed.

(2) In the absence of such a stipulation, ~~except in a case in which the penalty of death is to be imposed,~~ the clerk issues the mandate twenty days after the decision is filed, unless (i) a motion for reconsideration has been earlier filed, or (ii) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed. If a motion for reconsideration is timely filed and denied, the clerk will issue the mandate upon filing the order denying the motion for reconsideration.

~~(3) In a case in which the penalty of death is to be imposed, unless the parties stipulate to earlier issuance of the mandate, the clerk will issue the mandate upon the expiration of the time for applying for review by the United States Supreme Court, or, if such an application is timely filed, upon receipt of the Supreme Court's order disposing of the matter.~~

(d) - (e) [Unchanged.]

RAP 16.1
PROCEEDINGS TO WHICH TITLE APPLIES

(a) -(g) [Unchanged.]

~~**(h) Capital Cases.** Rules 16.19 through 16.27 define the procedure for appeals and original actions in which the death penalty has been decreed.~~

RAP 16.3
PERSONAL RESTRAINT PETITION--GENERALLY

(a) – (b) [Unchanged.]

(c) Jurisdiction. The Supreme Court and the Court of Appeals have original concurrent jurisdiction in personal restraint petition proceedings ~~in which the death penalty has not been decreed~~. The Supreme Court will ordinarily exercise its jurisdiction by transferring the petition to the Court of Appeals. ~~The Supreme Court has exclusive original jurisdiction in personal restraint proceedings in which the petitioner is under a sentence of death.~~

References [Unchanged.]

RAP 16.5
PERSONAL RESTRAINT PETITION—WHERE TO SEEK RELIEF

(a) Court of Appeals. A personal restraint petition should be filed in the Court of Appeals~~, unless the petition is subject to subsection (b)~~.

~~**(b) Supreme Court.** A personal restraint petition filed by a person under sentence of death shall be filed in the Supreme Court. See RAP 16.3(c).~~

(e<u>b</u>) A personal restraint petition may be transferred by the court in which it is filed. The transfer of a personal restraint petition between the Supreme Court and the Court of Appeals shall not be subject to a motion to reconsider or, if the transfer is ordered by the clerk of the court, a motion to modify.

(~~d~~<u>c</u>) If a petition filed in the Supreme Court is not transferred to the Court of Appeals, or has been transferred from the Court of Appeals to the Supreme Court, the determinations ordinarily made by the "Chief Judge" under rules 16.11 and 16.13 may be made by a commissioner.

References [Unchanged.]

~~RAP 16.19~~
~~PREPARATION OF REPORT OF PROCEEDINGS IN CAPITAL CASES~~

~~(a) The clerk of the trial court shall prepare a list of all pre-trial hearings, trial proceedings, and post-trial hearings, including any in camera or ex parte proceedings, that specifies the date of the hearing and the name of the court reporter. This list shall be served by the clerk of the trial court on each court reporter, the prosecuting attorney, the defendant's trial counsel and appellate counsel, and the trial judge within 10 days of the entry of a judgment and sentence. If appellate counsel has not been appointed to represent the defendant when the list is first prepared, the clerk of the trial court shall send a copy of the list to each appellate counsel within 10 days of appointment.~~

~~(b) Any party may serve and file objections to, and propose amendments to the list within 10 days after receipt of the list prepared by the clerk of the trial court. If objections or amendments to the list are served and filed, any objections or proposed amendments must be heard by the trial court judge for settlement and approval. If the judge before whom the proceedings were held is for any reason unable to promptly settle questions, another judge may act in the place of the judge before whom the proceedings were held.~~

~~(c) Once the list of hearings is settled, the clerk of the trial court shall serve a copy on each court reporter and shall file a copy with the Supreme Court. The final list should indicate the date it was served on the court reporters and the financial arrangements which have been made for payment of transcription costs.~~

~~(d) The court reporter shall complete the report of proceedings within 90 days after the reporter receives the list of hearings. If the report of proceedings cannot be completed within this time, the court reporter shall, no later than 10 days before the due date, submit an affidavit to the prosecuting attorney, to the defense appellate attorney, and to the Supreme Court stating the reasons for the delay. Any party or any court reporter may move for an extension of time from the Supreme Court.~~

~~(e) The court reporter shall file the report of proceedings with the clerk of the trial court. The clerk of the trial court shall transmit the report of proceedings to the Supreme Court. The clerk of the Supreme Court shall provide one copy of the report of proceedings to the defendant, two copies of the report of proceedings to the defendant's appellate attorney, and one copy of the report of proceedings to the prosecuting attorney.~~

~~(f) Objections or amendments to the report of proceedings may be served and filed within 30 days after the party receives a copy of the report of all proceedings. Copies of all objections shall be filed with the Supreme Court. The trial court shall settle the report of proceedings in accordance with RAP 9.5(c) and (d). The briefing schedule shall be suspended until the record is settled.~~

~~(g) The record may be corrected or supplemented at any time in accordance with RAP 9.10.~~

~~RAP 16.20~~
~~TRANSMITTAL OF JURY QUESTIONNAIRES AND CLERK'S PAPERS IN CAPITAL CASES~~

~~If questionnaires are used during jury selection, the clerk of the trial court shall seal and transmit a copy of all the questionnaires to the Supreme Court along with all of the clerk's papers, including copies of any clerk's minutes. The clerk of the Supreme Court will provide defendant's appellate counsel and the prosecuting attorney copies of all of the juror questionnaires. These copies shall remain in the possession of counsel and not be made available to the defendant.~~

~~The clerk of the Supreme Court shall copy and distribute the clerk's papers as follows: one copy to the defendant, two copies to the defendant's appellate attorneys, and one copy to the prosecuting attorney.~~

~~RAP 16.21~~
~~CLERK'S CONFERENCE IN CAPITAL CASES~~

~~**(a) Application of Rule.** This rule applies only in direct appeals in criminal cases.~~

~~**(b) Clerk's Conference.** Upon receipt of the notice of appeal in a capital case by the Supreme Court, the clerk of the court shall set a clerk's conference. The clerk of the court shall give notice to the parties of the date, time, and place of the conference; the name of the commissioner or clerk who will conduct the conference; and the nature of the issues to be discussed at the conference. The convening of a clerk's conference shall not stay the requirements otherwise established by these rules. The clerk may continue a conference or convene another conference when necessary to establish procedures in the case.~~

~~**(c) Attendance at Clerk's Conference.** The attorneys for each party, if the notice requires it, shall attend the clerk's conference on the date, time, and place specified in the clerk's notice. Those in attendance should be ready to seriously consider the procedural issues attendant upon the case, including, but not limited to, settlement of the record, the briefing schedule, the page limitations for briefs, oral argument, and other matters which may promote the prompt and fair disposition of the appeal.~~

~~**(d) Clerk's Conference Order.** If, as a result of the clerk's conference, the parties agree to various matters to promote the prompt and fair disposition of the appeal, the Court may enter an order consistent with that agreement. If the parties fail to agree on any issue, the court will resolve the issues and enter an order. The order is binding on the parties during the review proceeding, unless the court otherwise directs on its own initiative or on motion of a party for good cause shown and on those terms the court deems appropriate.~~

~~RAP 16.22~~
~~FILING OF BRIEFS IN CAPITAL CASES~~

~~(a) The brief of an appellant shall be filed in the Supreme Court within 120 days after the report of proceedings is settled or the last date for filing any objections pursuant to Rule 16.19(f). The brief of a respondent shall be filed within 120 days after service of the brief of appellant.~~

~~(b) The personal restraint petition shall be filed within 180 days after the appointment of counsel or the court's determination that counsel will not be appointed. The response to a personal restraint petition shall be filed within 120 days after service of the petition.~~

~~(c) A brief of appellant or respondent, or a brief in support of or opposition to a personal restraint petition, shall not exceed 250 pages. A reply brief, a pro se supplemental brief, or the response to a pro se supplemental brief, shall not exceed 75 pages.~~

~~(d) If legal arguments are included in a personal restraint petition or the response to a personal restraint petition, no separate brief may be filed. A petition or response that contains legal arguments may not exceed 300 pages. The petition or response shall comply with RAP 10.4(a).~~

~~(e) The clerk will retain but not formally file a brief, petition, or response that exceeds these page limits, except on prior order of the court. Such an order will only be granted for compelling reasons. The clerk will not file a brief, petition, or response that violates the format requirements of RAP 10.4(a), if a properly formatted brief would violate the page limits. The clerk shall direct the party whose document has been rejected for formal filing to correct the deficiencies within a specified time period.~~

~~(f) For the purpose of determining compliance with this rule, appendices, the title sheet, table of contents, and table of authorities are not included.~~

~~RAP 16.23~~
~~ORAL ARGUMENT ON APPEAL IN CAPITAL CASES~~

~~(a) The parties may file a non-binding notice 14 days prior to oral argument that specifies the order in which issues will be presented and identifies which counsel will present the argument on each issue.~~

~~(b) At any time before receipt of such notice the clerk of the Supreme Court shall inform the parties if any member of the Court wants certain issues to be addressed during oral argument. After receipt of such notice, the clerk of the Supreme Court may notify the parties if any member of the Court wants additional issues to be addressed during oral argument.~~

~~(c) Each side is allowed 120 minutes for oral argument.~~

~~RAP 16.24~~
~~STAY OF EXECUTION IN CAPITAL CASES~~

~~(a) An application for stay of execution will be decided by the en banc court, except that a commissioner or the clerk may decide an application for a stay of execution in connection with a first petition for relief from restraint. No stay will be granted until after a death warrant has been issued. When any stay is granted, a commissioner or the clerk will immediately notify, in addition to the parties, the Superintendent of the Washington State Penitentiary and the Attorney General.~~

~~(b) The petitioner or his or her lawyer may file an application for a stay of execution in connection with a first petition for relief from restraint. This application shall be accompanied by a statement, describing one or more grounds for relief, which shall be deemed to be a petition for relief from restraint with leave granted to amend the petition upon appointment of counsel.~~

~~(c) Upon the filing of this application for stay of execution in connection with a first petition for relief from restraint and statement, a commissioner or the clerk shall issue a stay of execution, if the statement identified any ground for relief that is not patently frivolous.~~

~~(d) A stay of execution pending a final disposition of a second or subsequent petition shall not be granted unless the petition makes a substantial showing that the petition is not barred by RCW 10.73 or RAP 16.4(d).~~

~~(e) A stay of execution will dissolve when a certificate of finality is issued unless otherwise ordered by the court.~~

~~Comment~~

~~The date the statement of grounds for relief that accompanies an application for a stay of execution in connection with a first petition for relief from restraint is filed shall be deemed under Washington law to be "the date on which the first petition for post-conviction review or other collateral relief is filed," 1996 Antiterrorism and Effective Death Penalty Act, Chapter 154, sec. 2263(b)(2).~~

~~A stay will be granted "if the statement identifies any ground for relief that is not patently frivolous." In general, a claim could be considered "patently frivolous" only if (1) it was rejected on its merits on direct appeal, (2) it is clearly contrary to binding precedent, or (3) it is clearly contrary to the established record. A claim of ineffective assistance of counsel that was not raised on direct appeal will generally not be considered "patently frivolous."~~

~~RAP 16.25~~
~~APPOINTMENT OF COUNSEL ON PERSONAL RESTRAINT PETITION IN CAPITAL CASES~~

~~Unless petitioner is proceeding pro se or is represented by retained counsel, upon a request by petitioner to the Clerk of the Supreme Court and upon a finding that the petitioner is indigent, the Supreme Court shall appoint counsel to assist in preparing and presenting a first personal restraint petition. Appointed counsel must have demonstrated the necessary proficiency and commitment which exemplifies the quality of representation appropriate to capital cases. At least one attorney so appointed must have at least three years of experience in handling appeals or collateral reviews on criminal convictions and must be learned in the law of capital punishment by training or experience.~~

~~A list of attorneys qualified for appointment in death penalty personal restraint petitions will be recruited and maintained by a panel created by the Supreme Court. In appointing counsel, the Supreme Court will consider this list. However, the Supreme Court will have the final discretion in the appointment of counsel in personal restraint petitions in capital cases.~~

~~Counsel will not be appointed if the petitioner has clearly elected to proceed pro se and the court is satisfied that petitioner's election is knowing, intelligent, and voluntary. An attorney who represented the petitioner at trial will not be appointed. An attorney who represented petitioner on direct appeal will not be appointed unless petitioner and the attorney expressly request continued representation. Statutes providing for payment of expenses with public funds are not superseded by this rule.~~

~~The Supreme Court may appoint counsel to assist in a second or subsequent petition in accord with RCW 10.73.150.~~

RAP 16.26
PERSONAL RESTRAINT PETITIONS IN CAPITAL CASES--DISCOVERY

(a) Before or after a person under sentence of death files a personal restraint petition, the Supreme Court, on motion of that person, may order discovery. To obtain such an order, the person under sentence of death must establish facts that give rise to a substantial reason to believe that the discovery will produce information that would support relief under RAP 16.4(c). Information in support of the request that the person under sentence of death believes is privileged may be separated into a second confidential affidavit which identifies the asserted privilege with specificity and the law supporting the assertion of the privilege. Any affidavit which does not contain confidential information and the motion must be served on the prosecutor. The procedure for and form of the motion is as provided in RAP Title 17. Motions will ordinarily be considered without oral argument. Prior to ruling on the motion, the Court will review the confidential affidavit to determine whether the contents therein are protected by the asserted privilege. If the asserted privilege does not apply, the court will serve the State with a copy of the confidential affidavit at least five working days before the State's response to the motion is due.

(b) After a person under sentence of death has filed a personal restraint petition, the Supreme Court, on motion of the State, may order discovery. To obtain such an order, the State must establish facts that give rise to a substantial reason to believe that the discovery will produce information that would support the denial of relief under RAP 16.4(c).

(c) Discovery conducted pursuant to this rule shall be governed by the civil rules, unless otherwise ordered by the court.

(d) In the event a remand hearing is ordered, discovery shall be governed by RAP 16.12.

(e) Discovery may be allowed for preparation of a second or subsequent petition attacking the same judgment and sentence only upon a substantial showing that the petition is not barred by chapter 10.73 RCW or RAP 16.4(d).

~~RAP 16.27~~
~~PERSONAL RESTRAINT PETITION IN CAPITAL CASES--INVESTIGATIVE, EXPERT, AND OTHER SERVICES~~

~~Before or after the filing of a personal restraint petition, a person under sentence of death may file a motion for investigative, expert, or other services. Such a motion shall be granted only if the person establishes facts that give rise to a substantial reason to believe that the services will produce information that would support relief under RAP 16.4(c), and if the legislature has authorized and approved funding for such services. The motion shall be directed to the Supreme Court and may be made ex parte. Upon a showing of good cause, the moving papers may be ordered sealed by the court and shall remain sealed until further order of the court. Services may be allowed for preparation of a second or subsequent petition attacking the same judgment and sentence only upon a substantial showing that the petition is not barred by chapter 10.73 RCW or RAP 16.4(d).~~

~~SUPERIOR COURT~~
~~SPECIAL PROCEEDINGS RULES – CRIMINAL (SPRC)~~

~~TABLE OF RULES~~

~~**SPRC 1**~~
~~**SCOPE OF RULES**~~

~~(a) Except as otherwise stated, these rules apply to all stages of proceedings in criminal cases in which the death penalty has been or may be decreed. These rules do not apply in any case in which imposition of the death penalty is no longer possible.~~

~~(b) Except when inconsistent with these rules, the Superior Court Criminal Rules and the Rules of Appellate Procedure shall continue to apply in capital cases.~~

~~SPRC 2~~
~~APPOINTMENT OF COUNSEL~~

~~At least two (2) 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.~~

~~A list of attorneys 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 (5) years' experience in the practice of criminal law, 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 (3) 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.~~

~~Comment~~

~~If the period of time for filing the death notice has passed, and the death notice has not been filed, the court may then reduce the number of attorneys to one to proceed with the murder trial.~~

~~SPRC 3~~
~~COURT REPORTERS; FILING OF NOTES~~

~~(a) At the commencement of a capital case, the trial court will designate one or more court reporters for that case. To the extent practical, only designated reporters will report all hearings.~~

~~(b) As soon as possible after each hearing, the court reporter's notes, including electronic and nonelectronic stenographic notes of the hearing, will be submitted to the county clerk's office.~~

~~(c) Court reporter's notes of the hearing shall be indexed and stored by the county clerk's office.~~

~~(d) Court reporter's notes of the hearing shall not be provided to anyone except the court reporter who produced the notes, unless a court order provides otherwise.~~

~~(e) A court reporter may withdraw the court reporter's notes of a hearing as required for transcription. The court reporter's notes shall be returned to the county clerk's office at the same time the transcript is filed with an appellate court.~~

~~SPRC 4~~
~~DISCOVERY—SPECIAL SENTENCING PROCEEDING~~

~~Before the guilt phase of the trial begins, pursuant to a schedule set by the court, both parties shall provide discovery, pursuant to CrR 4.7(a) and (b) of evidence that they anticipate offering at the special sentencing proceeding. The trial court has discretion, in accordance with CrR 4.7(h)(4), to defer disclosure of all or part of the defendant's penalty phase evidence until the guilt phase has been completed. This discovery shall, if necessary, be supplemented pursuant to CrR 4.7(h)(2).~~

~~SPRC 5~~
~~MENTAL EXAMINATION OF DEFENDANT~~

~~(a) If the defendant may offer at the special sentencing proceeding expert testimony concerning his or her mental condition, the defendant shall notify the prosecuting attorney at least 30 days prior to the start of jury selection. This time may be extended by the court for good cause.~~

~~(b) If the defendant has provided such notification, the court, on motion of the prosecuting attorney, shall enter an order requiring the defendant to submit to examination by one or more experts designated by the prosecuting attorney. The court shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The defendant may have a representative present at the examination, who may observe the examination but not interfere with or otherwise obstruct the examination. Unless otherwise ordered by the court, the defendant or the defendant's representative may make an audio tape recording of the examination, which shall be made in an unobtrusive manner.~~

~~(c) By the date set by the court, the defendant or the defendant's attorney shall provide the State's experts with any reports generated by defense experts, all raw data relied on, and any test results. The information given to the experts shall be supplemented whenever new materials become available.~~

~~(d) If the State's expert believes that the material provided by the defendant is inadequate for a proper evaluation, the expert may request the court to require that further materials be provided. If the defendant fails to cooperate with the examination, the expert may request the court to require the defendant to answer specific questions or participate in specific tests. The court shall consider these requests at a closed hearing. The defendant and his or her attorneys shall be given an opportunity to be heard. The prosecuting attorney shall not be allowed to participate. The record of the hearing shall be sealed as provided in subsection (f).~~

~~(e) On completing the examination, the prosecution expert shall submit a report setting out the tests performed and their results, the conclusions reached by the expert, and the basis for those conclusions. The report shall be provided to the defendant's attorney and filed with the court.~~

~~(f) The expert's report and materials connected with it shall be sealed. The expert shall not discuss his or her conclusions or any information connected with the examination with anyone, other than the defendant's attorneys or other experts whose participation is necessary for a proper examination. Any such experts shall be under the same restrictions.~~

~~(g) Within 24 hours after a jury returns a verdict finding a defendant guilty of aggravated murder in the first degree, the court will require the defendant to elect whether he or she may present expert testimony at the special sentencing proceeding concerning his or her mental condition. If the defendant elects not to present such testimony, the report shall remain permanently sealed, the restrictions set out in subsection (f) shall remain permanently in effect,~~

~~and the State shall be permanently prohibited from direct or derivative use against the defendant of the report or of materials or information provided to the expert. If the defendant elects to present such testimony, the court shall provide a copy of the experts' reports to the prosecuting attorney and shall relieve the experts of the restrictions. The prosecuting attorney may use information obtained from the expert solely to rebut expert testimony offered by the defense at the special sentencing proceeding.~~

~~(h) If, in any subsequent proceeding related to the crimes for which the defendant was convicted, the defendant places his or her mental status in issue, the court may direct that relevant portions of the experts' reports be disclosed to the prosecuting attorney and that the experts shall discuss those portions with the prosecuting attorney.~~

~~SPRC 6~~
~~PROPORTIONALITY QUESTIONNAIRES~~

~~(a) Within 14 days after the entry of a judgment and sentence convicting a defendant of aggravated first degree murder, the prosecuting attorney and the defendant's attorney shall each complete a proposed questionnaire in the form specified in RCW 10.95.120. The proposed questionnaires shall be filed with the clerk of the trial court. Copies shall be provided to the court and served on the opposing attorney.~~

~~(b) The court shall consider the proposed questionnaires and all other information in the record. No hearing shall be held unless the court so directs. Within 30 days after the entry of the judgment and sentence, the court shall complete a final questionnaire. The questionnaire shall be submitted to the clerk of the Supreme Court, to the defendant or his or her attorney, and to the prosecuting attorney.~~

~~(c) Statements made by an attorney in a proposed questionnaire shall not be considered admissions. Statements made by the court in the final questionnaire shall not be considered findings of fact. The proposed questionnaires and the final questionnaire shall not be used by the parties or the courts for any purpose in connection with the case to which they pertain or any collateral proceeding involving the same defendant. They shall be used only in other cases, for the purpose of making the determination required by RCW 10.95.130(2).~~

~~(d) In any brief or memorandum, a questionnaire may be cited in the following format: first and last name of defendant, questionnaire number, county of conviction, year of sentencing. For example: "John Doe, no. 9 (Snohomish, 1982)."~~

~~**SPRC 7**~~

~~**DESTRUCTION OF RECORDS, EXHIBITS, AND STENOGRAPHIC NOTES**~~

~~No records, exhibits, or stenographic notes shall be considered for destruction in a case in which the death penalty has been imposed while the defendant is still alive. Before destroying any records, exhibits, or notes in a capital case, the clerk will provide 60 days notice by certified mail, return receipt requested, to the prosecuting attorney, to the defendant's last known attorney of record, and to the defendant. To allow this notice, an attorney who represents the defendant in any challenge to the conviction should notify the clerk of the trial court of the fact of representation and the attorney's current address. Such notification does not constitute an appearance for any purpose other than receiving notice under this rule.~~