



## CITY OF KIRKLAND

City Attorney's Office

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### MEMORANDUM

**To:** Kurt Triplett, City Manager  
**From:** Robin Jenkinson, City Attorney  
**Date:** September 13, 2011  
**Subject:** ADOPTION OF PUBLIC DEFENSE STANDARDS

#### **RECOMMENDATION:**

The City Council approves the attached resolution adopting standards for the provision of public defense services to the City of Kirkland.

#### **BACKGROUND DISCUSSION:**

The City of Kirkland prosecutes misdemeanor offenses that are committed by adults within the Kirkland city limits. The misdemeanor offenses are filed in the Kirkland Municipal Court.

In accordance with the 6<sup>th</sup> Amendment of the United States Constitution, and Article I, Section 22 of the Washington Constitution, persons charged with misdemeanors who are deemed indigent are entitled to the effective assistance of counsel at public expense. Chapter 10.101 RCW establishes a process for determining eligibility for public defense and requires that municipalities adopt standards for the delivery public defense services.

The City currently contracts with a law firm located within the city limits of Kirkland for the provision of public defense services. The City Manager's Office manages the contract. The law firm with which the City contracts dedicates the majority of its practice to misdemeanor public defense and the firm's attorneys have extensive experience representing misdemeanor defendants from arraignment through appeal.

The City prides itself on providing the highest quality public defense at a reasonable cost. In furtherance of this effort, and in accordance with Chapter 10.101 RCW, the attached resolution has been prepared for the Council's consideration.

In 2006, the City Council approved Resolution R-4600 adopting the public defense standards ("Standards") then endorsed by the Washington State Bar Association ("WSBA"). The WSBA endorsed updated versions of the Standards in 2007 and 2011. The Standards endorsed by the WSBA include numerical caseload limits. The Washington State Association of Municipal Attorneys, Association of Washington Cities, and Washington State Association of Counties all opposed the inclusion of numerical limits, urging that experienced, skilled attorneys may competently handle a larger volume of cases; particularly simple misdemeanors. Imposing such limits would increase the cost. The attached Resolution does not include numerical case limits, but does address caseloads. The "Standards" endorsed by the WSBA currently have the status of guidelines, but would become court rules if adopted by the Washington Supreme Court.

RESOLUTION R-4894

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELATING TO STANDARDS FOR THE PROVISION OF PUBLIC DEFENSE SERVICES.

WHEREAS, the City of Kirkland prosecutes misdemeanor offenses that are committed by adults within the Kirkland city limits; and

WHEREAS, the misdemeanor offenses are filed in the Kirkland Municipal Court; and

WHEREAS, in accordance with the 6th Amendment of the United States Constitution, and Article I, Section 22 of the Washington Constitution, persons charged with misdemeanors who are deemed indigent are entitled to the effective assistance of counsel at public expense; and

WHEREAS, Chapter 10.101 RCW establishes a process for determining eligibility for public defense and requires that municipalities adopt standards for the delivery of public defense services; and

WHEREAS, the City currently contracts with a law firm located within the city limits of Kirkland for the provision of public defense services; and

WHEREAS, the firm that the City contracts with dedicates a majority of its practice to misdemeanor public defense and the firm's attorneys have extensive experience representing misdemeanor defendants from arraignment through appeal; and

WHEREAS, the City prides itself in providing the highest quality public defense at a reasonable cost; and

WHEREAS, in furtherance of this effort, and in accordance with Chapter 10.101 RCW, the City desires to adopt standards for the delivery of public defense services;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

SECTION 1. – The following standards apply to all public defense services provided to the City of Kirkland.

**Definitions**

A. Attorney. As used in these standards, the term "attorney" shall mean an attorney under contract with the City of Kirkland for the provision of public defense services, and shall also mean the law firm

for which the attorney works. Therefore, these standards shall also apply to law firms who are under contract with the City for the provision of public defense services.

B. Defendant. The term "defendant" shall mean a person who has been charged with a misdemeanor offense in the Kirkland Municipal Court, and who is represented by an attorney as the term attorney is defined in these standards.

Standard 1: Compensation

The City's contract for public defense services shall provide for payment at a rate that is competitive for like services in the state of Washington and in the North King County area in particular.

No contract for public defense services shall require the attorney to pay any compensation to another attorney in the event the attorney is disqualified from representing a defendant due to a conflict of interest.

Standard 2: Duties and Responsibilities of Counsel

Attorneys shall provide services in a professional and skilled manner consistent with the minimum standards of the Washington State Bar Association, Washington's Rules of Professional Conduct, applicable case law, the Constitutions of the United States and Washington, and the court rules that define the duties of counsel and the rights of defendants. At all times during the representation of a defendant, the attorney's primary responsibility shall be to protect the interests of the defendant.

Standard 3: Caseload Limits, Types of Cases, and Limitations on Private Practice

Attorneys shall maintain a caseload such that he or she can provide each and every defendant effective assistance of counsel as guaranteed by these standards. The attorney shall be mindful of the number of open cases for which he or she is counsel of record, the type or complexity of those cases and any prospective cases, his or her experience, the manner in which the Public Defense Standards jurisdiction processes cases, and any private practice in which he or she is engaged.

When contracting with an attorney, the City may, if appropriate, limit the number of cases an attorney may handle. Such limitation may be based upon the experience of the attorney, the training the attorney has received, the complexity of the cases being assigned the attorney, defense services the attorney may provide to other municipalities, the scope and extent of the attorney's private practice, justified complaints that may have been made against the attorney, and any other relevant factors.

Standard 4: Responsibility for Expert Witnesses and Investigative Services

Attorneys shall be free to retain experts and investigators of the attorney's choosing, and may apply to the court for such services pursuant to applicable court rules.

Standard 5: Administrative Expenses and Support Services

Any contract for the provision of public defense services should provide for or include administrative costs and support costs. Attorneys may use qualified paralegal, secretarial, investigative, and other services as deemed appropriate.

Attorneys shall maintain an office that accommodates confidential meetings with defendants, the receipt of mail, and service of process. Attorneys shall maintain adequate communication services, including but not limited to, telephone and email, to provide for efficient communication with defendants, the court, and the City.

Standard 6: Reports of Attorney Activity

Attorneys shall maintain a case reporting and case management information system, and the attorneys shall provide reports to the City in a form and at increments as agreed to by the City and the attorneys. Attorneys shall not be required to compromise any attorney confidences when providing these reports.

Standard 7: Training

Attorneys must engage in regular training in the areas of criminal defense law, criminal process, trial advocacy, legal writing, appellate work, law practice management, or any other subject that, in the opinion of the attorney, is applicable to the work of public defense services.

Standard 8: Supervision, Monitoring and Evaluation of Attorneys

Attorneys shall establish a system in which more senior attorneys regularly review the work of more junior attorneys. The more senior attorneys shall review the case outcomes, caseloads, and any other information deemed appropriate, and shall regularly monitor the attorney's interactions with defendants, case preparation, and in-court activities of more junior attorneys. Attorneys may seek input from judges and other attorneys if appropriate.

Standard 9: Substitution of Counsel and Assignment of Contracts

Attorneys shall not assign a defendant to another law firm or subcontract with another law firm without first obtaining the express written permission of the City and shall remain directly involved in the representation of assigned defendants.

Standard 10: Qualifications of Attorneys

Attorneys shall endeavor to provide the highest quality public defense services. At a minimum, attorneys shall comply with the following: satisfy the minimum qualifications to practice law as established by the Washington Supreme Court; be familiar with the statutes, court rules, case law and constitutional law applicable to misdemeanor criminal defense work; be familiar with Washington's Rules of Professional Conduct; become familiar with performance guidelines for misdemeanor public defense if adopted by the Washington State Bar Association; be familiar with the consequences of any conviction or adjudication including but not limited to immigration implications; and be familiar with mental health and substance abuse issues applicable to misdemeanant defendants.

Standard 11: Disposition of Defendant Complaints

Attorneys shall establish a process for responding to complaints made by defendants. At a minimum, all complaints shall be reviewed by one or more senior attorneys of the law firm. Complaints that are not resolved by the attorney shall be directed by the attorney to the City Manager's Office, or may be directed to the Washington State Bar Association.

Standard 12: Cause for Termination of Defender Services and Removal of Attorney

Contracts with the attorney shall include grounds for termination. Such grounds for termination shall be based on good cause, which shall include, but shall not be limited to, the failure to provide effective assistance of counsel, the disregard of the rights and interests of the defendant, and or a willful disregard for these standards.

Standard 13: Non-Discrimination

Attorneys shall not, in the hiring of employees or the provision of services made possible or resulting from a contract with the City, discriminate on the grounds of race, color, religion, national origin, age marital status, gender, sexual orientation or disability.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2011.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2011.

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MAYOR

Attest:

\_\_\_\_\_  
City Clerk