

## COMMISSIONERS' PROCEEDINGS

### Regular Meeting Adams County Courthouse, Ritzville

August 24, 2009  
(Monday)

#### Call to Order @ 8:30 a.m.

#### Present:

Chairman Rudy Plager  
Commissioner Jeffrey W. Stevens

#### Absent:

Roger L. Hartwig, Vice-Chairman

10:04 a.m.

#### Public Works

Updates were provided on facilities, road projects including Hills/Urquhart, solid waste transfer stations, and the Adams County Fair grounds.

10:33 a.m.

#### Public Defender Standards

Chairman Plager convened the public hearing on proposed Ordinance No. O-02-09 an Ordinance to Adopt Standards for the Delivery of Public Defense Services; Repealing Ordinance No. O-05-08; and, Amending Adams County Code, Chapter 2.92.

Prosecutor Flyckt reviewed the changes and noted that this Ordinance was a substantial step towards improving indigent defense in Adams County.

There were no members of the public present. Press from the Ritzville Journal was present.

Hearing no further comments or questions Chairman Plager closed the hearing at 11:08 a.m.

Commissioner Stevens moved, Plager seconded, to *approve **Ordinance No. O-02-09 An Ordinance of Adams County Adopting Standards for***

***the Delivery of Public Defense Services; Repealing Ordinance No. O-05-08; and, Amending Adams County Code, Chapter 2.92. Motion carried.***

11:10 a.m.

Just moments after 11:10 a.m. current Public Defenders Bajalcaliev and Lewellen joined the meeting and Chairman Plager allowed them time to speak regarding the Standards for Public Defense Services.

11:40 a.m.

**Recess @ 12:00**

**Reconvene @ 1:00 p.m.**

3:13 p.m.

**Fiber Optics**

Prosecutor Flyckt reviewed his recommended changes for the contracts with Century Tel and Noel Communications for installation of fiber in certain county buildings. The Board concurred with the minor change in the CenturyTel contract. Central Services Director Boness joined the meeting to respond to questions regarding the Noel Communications contract. Boness then contacted Noel by telephone to enable the group to ask questions and to receive feedback on certain issues. Prosecutor Flyckt will continue dialogue with Noel Communications and draft the final agreement.

3:48 p.m.

**WSU Extension/Crop and Soil Sciences**

Commissioner Stevens moved, Plager seconded, to *authorize the Chairman to sign Amendment Number 16 to Agreement between Adams County and Washington State University concerning Adams County Support for William Schillinger allowing expenditures up to \$29,000 and extending the period of the agreement through June 30, 2010. Motion carried.*

**Consent Agenda**

Commissioner Stevens moved, Plager seconded, to *approve the Consent Agenda. Motion carried.*

Preliminary minutes of August 10, 12, 17 and 19, 2009

Vouchers audited and certified by the Adams County Auditor as required by RCW 42.24.080, and those expense reimbursement claims

certified as required by RCW 42.24.090 and recorded on a listing, which was made available to the board. These vouchers were listed as follows:

<u>Fund</u>	<u>Control Number</u>	<u>Amount</u>
001	093365-093393	\$ 14,885.84
001	Hand Pay	\$ 307.93
103	093394	\$ 133.93
104	093395-093405	\$ 8,182.97
106	093406-093407	\$ 500.85
109	093408-093410	\$ 690.59
112	093411	\$ 235.50
117	093412-093414	\$ 709.54
123	093415	\$ 1,800.00
166	093416-093417	\$ 839.30
502	093418-093421	\$ 2,717.18
001	2550-2551	\$ 15,255.53
108	2552-2559	\$ 12,271.92
115	2560-2571	\$449,339.00
122	2572-2576	\$ 10,266.27
401	2577-2585	\$ 43,499.02
501	2586-2589	\$ 13,440.57
590	2590-2602	\$ 40,728.27
Total		\$615,804.21

Approved **Resolution No. R-33-09 In the Matter of Dissolving the Petty Cash Fund for the Adams County Sheriff's Revolving Checking Account**

Approved **Resolution No. R-34-09 In the Matter of Dissolving the Two Petty Cash Funds for the Development Disabilities Fund #117**

Approved **Resolution No. R-35-09 In the Matter of Transferring Funds from the Current Expense Fund #001 to Criminal Justice Fund #105**

Approved **Resolution No. R-36-09 In the Matter of Dissolving the Petty Cash Fund for the Adams County Fair**

Approved **Resolution No. R-37-09 In the Matter of Dissolving the Petty Cash Fund and the Two Petty Cash Change Drawers in the Auditor's Othello Licensing Office**

**Permanent Minutes Signed**

August 3 and 5, 2009

**Correspondence Received**

Washington State Auditor's Office re: Financial Statements and Federal Single Audit Report for Adams County for period January 1, 2008-December 31, 2008

Department of Ecology re: Eligibility status on the Adams County Water Conservancy Board for Joyce McNeil

Town of Washtucna re: appreciation for funding of the extension of the walking path

Adams Conservation District re: agenda for August 20 and minutes of June 18

Ehman J. Sheldon, City of Othello re: preliminary information relative to the City/DOT Highway 24/26 Project

Department of Ecology, Elaine Snouwaert, Water Quality Program re: South Fork Palouse River Bacteria Water Quality Improvement Project

Washington Counties Risk Pool re: upcoming changes and issues to be addressed during the annual County visitations

**Adjournment @ 4:30 p.m.**

Submitted:

s/Linda Reimer, MMC  
Clerk of the Board

Edited and Approved:

BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON

s/Rudy Plager, Chairman

-ABSENT-

Roger L. Hartwig, Vice-Chairman

s/Jeffrey W. Stevens, Commissioner

**RESOLUTION NO. R-33-09**

**ORDER OF BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON**

**IN THE MATTER OF DISSOLVING THE PETTY CASH FUND FOR THE ADAMS  
COUNTY SHERIFF'S REVOLVING CHECKING ACCOUNT**

**WHEREAS**, a Revolving Checking Petty Cash Fund in the amount of \$1,200 was established for the Adams County Sheriff's Office to facilitate in the purchase by Sheriff's Office employees of products for the Jail and Sheriff's Office in bulk; and,

**WHEREAS**, the process of employees performing this service is no longer in use;

**THEREFORE BE IT RESOLVED** that the Revolving Checking Petty Cash Fund be closed and the one thousand two hundred and no/100 dollars (\$1,200) be deposited into the Current Expense Fund #001 Miscellaneous Revenue Account BARS 369.90.00.00.

**DATED** this 24<sup>th</sup> day of August, 2009.

BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON  
s/Rudy Plager, Chairman  
-ABSENT-  
Roger L. Hartwig, Vice-Chairman  
s/Jeffrey W. Stevens, Commissioner

ATTEST:  
s/Linda Reimer, MMC  
Clerk of the Board

**RESOLUTION NO. R-34-09**

**ORDER OF BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON**

**IN THE MATTER OF DISSOLVING THE TWO PETTY CASH FUNDS FOR THE  
DEVELOPMENT DISABILITIES FUND #117**

**WHEREAS**, Resolution No. R-48-93 established a Petty Cash Fund in the amount of \$125 for the Adams County Development Disabilities Fund #117 to allow for incidental purchases in the Center located in Lind, Washington; and,

**WHEREAS**, Resolution No. R-70-02 established a Petty Cash Imprest Fund in the amount of \$40 to provide change for customers in the Adams County Development Center Store located in Lind, Washington; and,

**WHEREAS**, the Center and the Store have both closed and the need for the two Petty Cash Funds no longer exists;

**THEREFORE BE IT RESOLVED** that these two Petty Cash Funds be dissolved and the one hundred twenty-five and no/100 dollars (\$125) and the forty and no/100 dollars (\$40) be deposited into the Adams County Development Disabilities Fund #117 Miscellaneous Revenue Account BARS 369.90.00.00; and,

**BE IT NOTED** that the forty dollars was already deposited on April 16, 2009 into Miscellaneous Revenues as Lind Cash Drawer.

**DATED** this 24<sup>th</sup> day of August, 2009.

BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON  
s/Rudy Plager, Chairman  
-ABSENT-  
Roger L. Hartwig, Vice-Chairman  
s/Jeffrey W. Stevens, Commissioner

ATTEST:  
s/Linda Reimer, MMC  
Clerk of the Board

**RESOLUTION NO. R-35-09**

**ORDER OF BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON**

**IN THE MATTER OF TRANSFERRING FUNDS FROM THE CURRENT EXPENSE  
FUND #001 TO CRIMINAL JUSTICE FUND #105**

**WHEREAS**, funds were allocated in the Current Expense Fund #001 for the operation of the Criminal Justice Fund #105;

**THEREFORE BE IT HEREBY RESOLVED** that one hundred sixty-four thousand seven hundred seventy-five and no/100 dollars (\$164,775) be transferred from Current Expense Fund #001 BARS 597.20.00.01 to the Criminal Justice Fund #105 BARS 397.00.00.00.

**DATED** this 24<sup>th</sup> day of August, 2009.

BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON  
s/Rudy Plager, Chairman  
-ABSENT-  
Roger L. Hartwig, Vice-Chairman  
s/Jeffrey W. Stevens, Commissioner

ATTEST:  
s/Linda Reimer, MMC  
Clerk of the Board

**RESOLUTION NO. R-36-09**

**ORDER OF BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON**

**IN THE MATTER OF DISSOLVING THE PETTY CASH FUND FOR THE ADAMS  
COUNTY FAIR**

**WHEREAS**, Resolution No. R-86-94 and Resolution No. R-78-95 established a Petty Cash Fund for \$100 and increased the Petty Cash Fund to \$300 respectively and is no longer needed; and,

**WHEREAS**, the Petty Cash Fund was established and increased in a different budget year than the current year of 2009;

**THEREFORE BE IT HEREBY RESOLVED** that three hundred and no/100 dollars (\$300) be deposited into the Adams County Fair Fund #108 Miscellaneous Revenue Account BARS 369.90.00.00; and,

**BE IT NOTED** that the above monies were deposited on July 14, 2009.

**DATED** this 24<sup>th</sup> day of August, 2009.

BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON  
s/Rudy Plager, Chairman  
-ABSENT-  
Roger L. Hartwig, Vice-Chairman  
s/Jeffrey W. Stevens, Commissioner

ATTEST:  
s/Linda Reimer, MMC  
Clerk of the Board

**RESOLUTION NO. R-37-09**

**ORDER OF BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON**

**IN THE MATTER OF DISSOLVING THE PETTY CASH FUND AND THE TWO PETTY CASH CHANGE DRAWERS IN THE AUDITOR'S OHELLO LICENSING OFFICE**

**WHEREAS**, the Auditor's Othello Licensing Office was closed on July 13, 2009 and was replaced by a Licensing Sub-agency; and,

**WHEREAS**, Resolution No. R-111-80, Resolution No. R-102-81, Resolution No. R-75-87, Resolution No. R-76-94, Resolution No. R-49-98, and Resolution No. R-25-07 either established or increased the three Petty Cash Funds and will no longer be needed with the closure of the office; and,

**WHEREAS**, these three petty cash funds total \$500 and were all established or increased in a different budget year than the current year of 2009;

**THEREFORE BE IT HEREBY RESOLVED** that five hundred and no/100 dollars (\$500) be deposited into the Current Expense Fund #001 Miscellaneous Revenue Account BARS 369.90.00.00.

**DATED** this 24<sup>th</sup> day of August, 2009.

BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON  
s/Rudy Plager, Chairman  
-ABSENT-  
Roger L. Hartwig, Vice-Chairman  
s/Jeffrey W. Stevens, Commissioner

ATTEST:  
s/Linda Reimer, MMC  
Clerk of the Board

**ORDINANCE NO. 0-02-09**

**AN ORDINANCE OF ADAMS COUNTY ADOPTING STANDARDS FOR THE DELIVERY OF PUBLIC DEFENSE SERVICES; REPEALING ORDINANCE NO. 0-05-08; AND, AMENDING ADAMS COUNTY CODE, CHAPTER 2.92**

**SECTION 1: POLICY, AUTHORITY AND PURPOSE**

Pursuant to the provisions of RCW 10.101.030, each county shall adopt standards for the delivery of public defense services, where those services are provided by contract, assigned counsel, or a public defender office to include those matters outlined therein;

and the standards endorsed by the Washington State Bar Association for the provision of public defense services should serve as guidelines when adopting such standards.

## **SECTION 2: DEFINITIONS**

For the purpose of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given in this section:

1. "Case" means one order appointing the Public Defender Contractors to one client in a single action, resulting in one "file" opened and assigned to a specific attorney. A single appointment, and thus a case, may contain more than one count, and more than one court file number. Actions involving violations of judgments & sentences, probation & parole, extraditions & detainers, initial probable cause determinations, and all other matters (including initial case assignments) not involving representation from initial charging through final adjudication in the trial court of record are counted as follows: five (5) actions equaling one case in the respective court in which the action is heard.
2. "Board" means the Board of Commissioners of Adams County.
3. "Public Defender Contractors" mean attorneys who have entered in to a contract with the Board or subcontract with the Board's approval to represent indigent defendants.

## **SECTION 3: COMPENSATION**

Public Defender Contractors should be compensated commensurate with the complexity of the case assigned and time required for the case. There should be provisions for extraordinary compensation in cases that require an unusual measure of time or expertise.

## **SECTION 4: DUTIES & RESPONSIBILITIES OF PUBLIC DEFENDER CONTRACTORS**

Public Defender Contractor's primary and most fundamental responsibility is to promote and protect the best interests of the client.

Representation 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 Standards, and the Rules of Professional Conduct for Attorneys, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases.

## **SECTION 5: CASELOAD LIMITS AND TYPES OF CASES**

Caseload limits and types of cases for Public Defender Contractors should allow each attorney to give each client the time and effort necessary to ensure effective representation. No attorney or firm rendering indigent defense services shall accept

workloads that, by reason of their excessive size, interfere with the rendering of reasonable and quality representation.

A Public Defender Contractor shall not allow his or her private law practice to interfere with the representation of indigent defendants.

1. Subject only to the consideration of subsection (3) below, in a one-year period the appointed attorney should ordinarily, as a goal towards future indigent defense improvements, not be expected to carry caseloads which substantially exceed:

- 150 felony cases; or

- 300 misdemeanor cases, provided in the following circumstances, the caseload may be adjusted up to no more than 400 cases depending upon:

- The caseload distribution between simple misdemeanors and complex misdemeanors, or

- Jurisdictional policies such as post-filing diversion and opportunity to negotiate resolution of large number of cases as non-criminal violations, or

- Other court administrative procedures that permit a defense lawyer to handle more cases; or

- 250 Juvenile Offender Cases; or

- Dependency Cases: The number of Dependency cases per attorney per year, or the number of open Dependency cases at a given time per attorney, shall be determined by a contract between the attorneys under the Adams County Public Defender Contract and the Board with oversight by the Washington State Office of Public Defense.

2. In a one-year period, a public defender contract attorney ordinarily should not be assigned more than a pro rata share of public defense cases in relation to that attorney's additional private practice cases. For example, an attorney with a public defense contract of 75 felonies per year should not regularly maintain more than a half-time private practice case load.

3. Certain factors not accounted for by RCW 10.101.030 or Standard Three: Caseload Limits and Types of Cases found in the Washington Public Defender Association Standards for Public Defense Services received from the Washington Defense Association as Adopted/Amended by the Committee on Public Defense (September 2007) also bear upon the number of cases a public defender attorney can effectively handle, including but not limited to the severity and complexity of the cases, the prosecutor's resources and practices, the location of the jail and courts relative to the attorney's office, the availability of diversionary disposition programs, the docketing practices of the local courts, the

definition of a “case”, and the availability of support staff and limited practice personnel.

If the total number of cases handled by the attorney under the Adams County Public Defender’s Contract exceed 120 percent of the caseloads specified in this Section in a given calendar year, or are less than 80 percent of the caseloads specified in this Section in a given calendar year, the Board and the Public Defender Contractors will confer and consider adopting various strategies with a goal towards addressing the increase or decrease in case load in future calendar years.

#### **SECTION 6: EXPERT EXPENSES**

The Public Defender Contractors shall have reasonable resources for expert witnesses/services in matters where such services are both material and necessary to the defense of the case. Public Defender Contractors’ request for expert witness / services fees under Court Rule 3.1(f) should be made through an ex-parte motion. The defense should be free to choose the expert of its choosing and in no case should be forced to select experts from a list pre-approved by either the court or the prosecution, provided that the court determines that such services are both material and necessary to the defense of the case.

#### **SECTION 7: ADMINISTRATIVE COSTS**

Attorneys shall be responsible for paying all administrative expenses of their office or firm not otherwise provided for in these standards or in a contract. Such costs may include law libraries, financial accounting, professional liability insurance, case management systems and other costs incurred in the day-to-day management of the contract. Attorneys shall maintain an office to maintain confidential meetings with clients, when necessary and required.

#### **SECTION 8: INVESTIGATORS**

The Washington Public Defender Association Standards for Public Defense Services published by the Washington Defense Association as Adopted/Amended by the Committee on Public Defense (September 2007) includes a standard addressing the number of investigators. (Standard Six : Investigators). It provides that a minimum of one investigator should be employed for every four attorneys. This standard may be given due consideration in providing investigators for the Public Defender Contractors.

#### **SECTION 9: SUPPORT SERVICES**

The attorneys under the Public Defender Contract should be adequately staffed with support staff, as well as have access to mental health professionals and interpreters depending on the types of cases being assigned. The Washington Public Defender Association Standards for Public Defense Services published by the Washington Defense Association as Adopted/Amended by the Committee on Public Defense (September 2007) includes a standard addressing the number of secretaries. (Standard Seven: Support Services). It provides that a minimum of one secretary should be

employed for every four attorneys. This standard may be given due consideration in reviewing the needed staffing levels for the Public Defender Contractors.

#### **SECTION 10: REPORTS OF ATTORNEY ACTIVITY AND VOUCHERS**

Public Defender Contractors shall maintain a case-reporting and management information system which tracks the number and type of cases and the disposition of each case under an existing contract, and the number and nature of other cases outside of the county by private representation or contract.

This information shall be provided on a quarterly bases to the Board, the judges of the District and Superior Courts, and be available to the Washington State Administrator of the Courts; provided, however, the Public Defender Contractors shall not be required to provide any information that compromises client confidentiality.

#### **SECTION 11: TRAINING**

As a condition being licensed to practice law in the State of Washington, attorneys are required to attend fifteen (15) hours of legal training each year.

Public Defender Contractors should document at least seven (7) hours of required training annually in the areas of criminal defense contemplated by their contract with the Board.

#### **SECTION 12: MONITORING AND EVALUATION OF ATTORNEYS**

Public Defender Contractors should develop a systematic procedure for monitoring and evaluating the performance of all junior, associate, and/or subordinate attorneys within their respective offices. Such evaluations should be performed on a regular basis, should be according to objective criteria, should include review of time and caseload records, in-court observations, review and inspection of transcripts where possible, review of files, and should consider any comments of judges, prosecutors, other defense attorneys and clients. Attorneys should be evaluated on their skill and effectiveness in client representation and their organizational abilities. Public Defender Contractors shall consult with the Board on a periodic basis concerning any deficiencies, or significant issues which may arise, regarding the performance of all junior, associate, and/or subordinate attorneys.

A third party committee may be convened by the Board on a bi-annual basis to review and evaluate overall contract administration and performance. The committee shall consist of one (1) judicial officer selected by the District and Superior Court Judges, a representative of the Board, a practicing lawyer appointed by the presiding officer of the Adams County Bar Association, and a citizen member appointed by the Adams County Law and Justice Council. The committee should consider any comments of judges, prosecutors, other defense attorneys, and clients in conducting evaluations. The committee shall communicate all findings and recommendations to the Board by the 30<sup>th</sup> of October in the final year of any bi-annual period for which the committee was convened. Law enforcement officers, prosecutors, attorneys currently serving as Public

Defender Contractors, or attorneys negotiating for such contracts, shall not serve as members of the committee.

### **SECTION 13: SUBSTITUTION OF ATTORNEYS OR ASSIGNMENT OF CONTRACT**

Public Defender Contractors should not sub-contract with another attorney or firm to provide representation without the prior consent of the Board.

The Board letting the contracts or the Court assigning clients to the Public Defender Contractors should maintain a record of the names and professional qualifications of the attorneys who will be directly representing the clients and ensure that such attorneys meet the minimum requirements set forth in these standards.

Any agreement with Public Defender Contractors shall address the continued representation of assigned clients at the expiration of the Agreement.

### **SECTION 14: LIMITATION ON PRIVATE PRACTICE OF CONTRACT ATTORNEYS**

Public Defender Contractors should ordinarily limit the amount of privately-retained work which they accept, in reverse proportion to the percentage of a full-time Public Defender caseload for which they contract.

### **SECTION 15: QUALIFICATION OF ATTORNEYS**

1. In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services should 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. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice areas; and
  - C. Be familiar with the collateral consequence of a conviction, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
  - D. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
  - E. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.
2. Trial attorneys' qualifications according to severity or type of case:
  - A. Death Penalty Representation. Each attorney acting as lead counsel in a death penalty case or an aggravated homicide case in which the decision to seek the death penalty has not yet been made shall meet the following requirements:

- ii. The minimum requirements set forth in Section 1; and
- ii. At least five (5) years criminal trial experience; and
- iii. Have prior experience as lead counsel in no fewer than nine (9) 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 jury trial in which the death penalty was sought; and
- v. have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
- vi. Have completed at least one (1) death penalty defense seminar within the previous two (2) years; and
- vii. Meet the requirements of Superior Court Special Proceeding Rules - Criminal Rule 2 (SPRC 2). 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, psychologist and other experts and support personnel should be added as needed.

B. Adult Felony Cases - Class A. Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements.

- i. Minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served two (2) years as a prosecutor; or
  - b. has served two (2) years as a public defender; or two (2) years in private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class B felony cases that have been submitted to a jury.

C. 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 shall meet the following requirements:

- i. Minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served one(1) year as prosecutor; or
  - b. has served one (1) year as public defender; or one (1) year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two (2) Class C felony cases that have been submitted to a jury.

D. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each staff 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 shall meet the following requirements:

- i. Minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served one (1) year as a prosecutor; or
  - b. has served one (1) year as public defender; or one (1) year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two (2) criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor, if available.

E. Persistent offender (Life Without Possibility of Release) Representation. Each attorney acting as lead counsel in a "two-strikes" or "three strikes" case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
  - a. four (4) years criminal trial experience; and
  - b. one (1) year experience as a felony defense attorney; and
  - c. experience as lead counsel in at least one Class A felony trial; and
  - d. experience as counsel in cases involving each of the following:
    1. Mental health issues; and
    2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
    3. Expert witnesses; and
    4. One (1) year of appellate experience or demonstrated legal writing ability.

F. Juvenile Cases - Class A. Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. Minimum requirements set forth in Section 1; and

- ii. Either has served one (1) year as a prosecutor, one (1) year as a public defender, or one (1) year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five (5) Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

G. Juvenile Cases - Classes B and C. Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. Minimum requirements set forth in Section 1; and
- ii. Either has served one (1) year as a prosecutor, one (1) year as a public defender, or one (1) year in a private criminal practice; and
- iii. Has been trial counsel alone in five (5) misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. Juvenile Status Offenses Cases. Each attorney representing a client in a "Becca" matter shall meet the following requirements:

- i. Minimum requirements as outlined in Section 1, and
- ii. Either:
  - a. have represented clients in at least two (2) similar cases under the supervision of a more experienced attorney or completed at least three (3) hours of CLE training specific to "status offense" cases; or
  - b. has participated in a least one (1) consultation per case with a more experienced attorney who is qualified under this section.

I. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a gross misdemeanor or condition of confinement shall meet with requirements as outlined in Section 1.

J. Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:

- i. Minimum requirements as outlined in Section 1, and
- ii. Attorneys handling termination hearings shall have six (6) months dependency experience or have significant experience in handling complex litigation.
- iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.

- iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one (1) consultation either with a State Office or Public Defense resource attorney or other attorney qualified under this section.

K. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:

- i. Minimum requirements set forth in Section 1; and
- ii. Shall not represent a respondent in a 90 or 180-day commitment hearing unless he or she has either:
  - a. served one (1) year as a prosecutor, or
  - b. served one (1) year as a public defender, or one year in a private civil commitment practice, and
  - c. been trial counsel in two (2) civil commitment initial hearings, and
- iii. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experience attorney in a 90 or 180 day commitment hearing.

L. Sex Offender "Predator" Commitment Cases. Generally, there should be two (2) counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. Minimum requirements set forth in Section 1, and
- ii. Have a least:
  - a. Three (3) years criminal trial experience; and
  - b. One (1) year experience as a felony defense attorney or one (1) year experience as a criminal appeals attorney; and,
  - c. Experience as lead counsel in at least one (1) felony trial, and
  - d. Experience as counsel in cases involving each of the following:
    - 1) Mental health issues; and
    - 2) Sexual offenses; and
    - 3) Expert witnesses; and
  - e. Familiarity with the Civil Rules; and
  - f. One (1) year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment case should meet the Minimum Requirements in Section 1 and have either one (1) year experience as a public defender or significant experience in the

preparation of criminal cases, including legal research and writing and training in trial advocacy.

M. Contempt of Court Cases. Each attorney representing a respondent shall meet the following requirements:

- i. Minimum requirements set forth in Section 1, and
- ii. Each attorney shall participate in at least one (1) consultation with a State Office or Public Defense resource attorney or other attorney qualified in this area of practice.

3. RALJ Misdemeanor Appeals to Superior Court:

Each attorney who is counsel alone for a case on appeal to the Superior Court from court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had 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 an RALJ appeal.

#### **SECTION 16: DISPOSITION OF CLIENT COMPLAINTS**

The attorneys who are principal to the Public Defender Contract shall promptly respond to clients who make complaints and should keep a written record of the complaints and the response.

Complaints should be first directed to the attorney handling the case, then to the principal attorney, if not the same attorney. If the complaint cannot be resolved by the respective office, the complaint should be directed to other avenues including the courts or the bar association.

Agreements with Public Defender Contractors who accept conflict cases should include a procedure to respond to client complaints.

#### **SECTION 17: CAUSE FOR TERMINATION OR REMOVAL OF ATTORNEY**

Contracts with Public Defender Contractors should only be terminated prior to their expiration for cause, which could include failure of the attorney to render adequate representation to the client, willful disregard of the rights and best interest of the client, violation of the Rules of Professional Conduct, willful disregard of the standards set forth herein; or any such other conduct detrimental to the administration of justice.

Representation in an individual case establishes an inviolable attorney-client relationship. Removing an attorney from a case should ordinarily not occur over the objection of the client.

#### **SECTION 18: NON-DISCRIMINATION**

Neither the Board, the Public Defender Contractors in their hiring practices to provide public defense representation, nor the attorneys selected in their representation of the clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or disability.

The Board and Public Defender Contractors shall comply with all federal, state and local non-discrimination requirements.

#### **SECTION 19: GUIDELINES FOR AWARDING DEFENSE CONTRACTS**

The Board should award contracts for public defense services only after it determines that the attorney or firm chosen can meet accepted professional standards and comply with all standards as set forth herein.

The Board may require, as a condition of awarding any contract that attorneys selected to provide public defense services maintain office facilities within Adams County if such shall be necessary for effective representation of clients.

County prosecutors and law enforcement officers shall not select the attorneys who will provide indigent defense services, nor shall they participate in negotiations of contracts for such services, except in the capacity as county civil counsel.

#### **SECTION 20: SEVERABILITY**

If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

#### **SECTION 21: PURPOSE OF STANDARDS**

The purpose of the standards adopted herein is to enhance the provision of indigent services in Adams County. Adoption of this ordinance shall in no way be construed to create a civil penalty or cause of action against either the attorneys providing indigent defense services or the county.

#### **SECTION 22: REPEALER**

Resolution No. R-57-08 and Ordinance No. O-05-08 as well as all other Resolutions or Ordinances of the County that are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

#### **SECTION 23: EFFECTIVE DATE**

This ordinance shall take effect and be in full force immediately after adoption.

#### **SECTION 24: AMENDMENT OF CODE**

This ordinance amends the Adams County Code designated as Chapter 2.92. These amendments shall take effect immediately upon passage.

**APPROVED** this 24th day of August, 2009.

**BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY, WASHINGTON**

s/Rudy Plager, Chairman

-ABSENT-

Roger L. Hartwig, Vice-Chairman

s/Jeffrey W. Stevens, Commissioner

ATTEST:

s/Linda Reimer, MMC

Clerk of the Board

Approved as to form:

s/Randy J. Flyckt, WSBA #29302

Prosecuting Attorney