



King County

Office of the Public Defender Conflicts of Interest and Withdrawal from Representation

1. **Policies and procedures.** The Office of the Public Defender (OPD) outlines its policies and procedures regarding conflicts of interest and withdrawal from representation in Exhibit V of the Contracts for Public Defense Legal Services. A copy of the relevant language is attached as Appendix A to this document. In general terms, the conduct of the attorneys providing legal services pursuant to such contracts, particularly relating to conflicts of interests, is governed by the Washington State Rules for Professional Conduct (RPC). Compliance with the contracts is monitored through annual audits of the contractors. Non-compliance would result in breach of contract, and sanctions available for breach.
2. **RPC Requirements.** Various sections of the RPC's touch on issues relating to conflicts of interest. The most specific are found in Title 1 of the RPC's, detailing attorney-client relationship. This particularly includes specific definitions contained in RPC 1.7 through RPC 1.11. The Washington State Bar *Washington Legal Ethics Deskbook* states: "The conflict of interest rules are based on two very important duties to clients: the duty of undivided loyalty and the duty of confidentiality.... Protection of client confidences and secrets is at the root of almost every conflict of interest rule."¹ Further explanation and definition of conflicts of interest rules and application are found in the Washington State Bar Ethics Opinions, as well as in Washington State case law. Once an attorney-client relationship is established, the conflict of interest rules apply to that representation. The reasonable, subjective belief of a purported client that an attorney-client relationship exists is controlling.²
3. **Sanctions for violation.** Failure to comply with conflict of interest rules can lead to serious consequences, including Washington State Bar disciplinary action against the attorney, disqualification from representation, and liability for legal malpractice. Such violations would also constitute breaches of contract under the OPD Contracts for Public Defense Legal Services.
4. **Withdrawal from representation.** The OPD contracts for Public Defense Legal Services outline the procedures relating to withdrawal from representation. Although such withdrawal can be for other reasons under the contract, withdrawal from representation would be required if a contractor determines that a conflict of interest exists which would prevent the contractor from accepting an assignment or continuing with ongoing representation. An analysis of recent OPD contractor data reflected that the primary reason for withdrawal was that a client retained private counsel (which occurred in 37.2 percent of contractor withdrawals). An additional 54 percent of the withdrawals were for reasons which would be conflicts of interests pursuant to the RPC.

¹ *Washington Legal Ethics Deskbook*, p. 11-3.

² *Washington Legal Ethics Deskbook*, p. 1-1.

APPENDIX A

**Office of the Public Defender Contract Requirements Relating to RPCs, Conflicts of Interest
and Withdrawal from Representation Rules**

Exhibit V. PUBLIC DEFENSE LEGAL SERVICES ...

I. WORK STATEMENT

The Agency shall provide the services of attorneys and staff members in compliance with all of the applicable laws and administrative regulations of the State of Washington, the United States, King County Code (KCC), Washington State Rules for Professional Conduct (RPC). ...

III. PROGRAM REQUIREMENTS ...

B. Practice Standards and Records

1. The Agency shall require that all attorneys, professional support staff and supervisors maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by OPD.
2. Upon closing a case, all attorney, professional support staff and supervisor files associated with the case shall be cross referenced and accessible as a whole for OPD monitoring.
3. The Agency shall maintain professional practice standards in providing a level of legal service that does not fall below the minimum professional standards and RPCs of the Washington State Supreme Court, the Washington State Bar, the National Legal Aid & Defender Association, and any applicable case law and court rules that define the duties of counsel to their clients. The Agency shall formally adopt the internal Agency practice standards as submitted to OPD February 1, 2006, and shall include a procedure for monitoring compliance with the standard. Case credit workload standards shall be according to paragraph III.B.14. below. ...

Conflicts & Withdrawal

Exh. V. Section III. PROGRAM REQUIREMENTS ...

A. Services

1. Case Credit Allocation and Case Assignment: ...
 - b. The Agency shall accept case assignments within contracted subject areas, including case assignments above the projected variance levels. Agency refusal to accept an individual case assignment within contractual subject areas shall not in and of itself be considered a material breach of this Contract, however the County may determine such refusal requires Agency corrective action. The County shall pay the Agency for work in excess of the variance levels according to Section IV of this Exhibit. ...

8. Upon assignment of any client charged with a criminal case to an Agency, the Agency shall make diligent and reasonable efforts to obtain discovery within five business days of the assignment, whether initial or subsequent, on any case. In all cases, discovery shall be reviewed as soon as possible and in no event later than five business days after receipt for purposes of determining any conflicts of interest. The Agency shall notify OPD immediately and no later than 14 calendar days from assignment without good cause shown, of any conflict of interest as defined by the Washington State Rules of Professional Conduct. The Agency shall state the basis when possible, as court determines, for the conflict in its written notification. ...
15. The Agency agrees to abide by the OPD Withdrawal requirement (Attachment E) when declining a case or withdrawing from a case because of a conflict of interest. Agency may withdraw only pursuant to applicable court rules and RPCs. Agency attorney shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this Exhibit. The Agency shall file a Notice of Withdrawal the same day of discovery of such conflict, or in no event more that three business days after discovery of conflict so that substitute counsel can be assigned by OPD.

The Agency shall immediately submit to OPD the OPD Withdrawal form and a copy of the court order, if any; approving withdrawal and the case will be re-assigned by OPD within one business day. Credits shall be applied according to Attachment A of this Exhibit. ...

Exh. V. Attachment A ...

Case transferred to another agency, assigned counsel, or retained counsel	Substantial advice credit if case is not completed prior to transfer and if Agency provides to OPD satisfactory justification for credit. This does not include withdrawals based on discovery of conflict upon initial conflict check by Agency, generally completed within 14 days of receipt of OPD assignment, including upon initial receipt of pretrial discovery. In the event that award of substantial advice credit alone results in a substantial financial hardship to the Agency, the Agency may request additional credit. Factors to be considered for additional credit include stage of proceedings (e.g. set for plea, set for or approaching trial date, amount and nature of work expended) and explanation made by the Agency to resolve any breakdown in communication between the defendant and the assigned attorney.
Case transferred to drug court	One case credit
Atty/Day or substantial advice	0.10 case credit

King County Office of Public Defense
 Summary of Case Reassignments
 January 1, 2010 through December 31, 2011
 By Year and Reassignment Reason

of Cases Reassigned by Assignment Year

Reassignment Reason	2010	2011	Combined	% of Total
Co-defendant is a client	314	266	580	20.2%
Witness is a client	256	305	561	19.5%
Suspect is a client	236	231	467	16.2%
Victim is a client	160	196	356	12.4%
Court appointed a different agency	121	131	252	8.8%
Irreconcilable breakdown between client and atty	104	84	188	6.5%
Internal conflict within agency	67	96	163	5.7%
Undisclosable ethical conflict within agency	68	62	130	4.5%
Client claims ineffective assistance of counsel	40	36	76	2.6%
Client previously represented by different agency	30	29	59	2.1%
Withdraw plea	31	11	42	1.5%
Client refuses to waive speedy trial rights	2	1	3	0.1%
Total reassignments by year	1,429	1,448	2,877	100%
Total case assignments by year	21,516	22,149	43,665	na
% of total assignments	6.6%	6.5%	6.6%	na

Avg # of Days Between Case Assignment & Reassignment

Reassignment Reason	2010	2011	Combined
Co-defendant is a client	22.84	20.44	21.74
Witness is a client	34.88	21.77	27.75
Suspect is a client	22.11	15.69	18.94
Victim is a client	18.73	9.76	13.79
Court appointed a different agency	142.99	84.95	112.82
Irreconcilable breakdown between client and atty	143.24	101.74	124.70
Internal conflict within agency	43.58	38.85	40.80
Undisclosable ethical conflict within agency	126.66	38.37	84.55
Client claims ineffective assistance of counsel	148.35	105.22	127.92
Client previously represented by different agency	78.50	16.79	48.17
Withdraw plea	183.90	184.18	183.98
Client refuses to waive speedy trial rights	8.50	7.00	8.00

Office of the Public Defender**Summary of Case Reassignments due to Reported Conflicts**

January 1, 2007 through December 31, 2010

By Year and Reassignment Reason

Where "Average Days Between" equals the average number of days between initial assignment and the date of reassignment

Reassignment Reason	2007	2008	2009	2010	All Years	
	# of Cases Reassigned	# of Cases Reassigned	# of Cases Reassigned	# of Cases Reassigned	# of Cases Reassigned	% of Total
Co-defendant is a client	464	444	407	315	1,630	25.3%
Witness is a client	414	336	293	251	1,294	20.1%
Suspect is a client	231	194	180	236	841	13.1%
Victim is a client	156	203	169	164	692	10.8%
Court appointed a different agency	120	115	96	88	419	6.5%
Client previously represented by different agency	158	95	42	26	321	5.0%
Client claims ineffective assistance of counsel	135	108	34	33	310	4.8%
Irreconcilable breakdown between client and atty	47	59	91	91	288	4.5%
Internal conflict within agency	73	71	57	64	265	4.1%
Undisclosable ethical conflict within agency	30	29	72	56	187	2.9%
Withdraw plea	35	37	45	23	140	2.2%
Client filed a complaint about agency	19	16	-	-	35	0.5%
Client refuses to waive speedy trial rights	1	2	1	2	6	0.1%
Client pled guilty	3	2	-	-	5	0.1%
Total Reassignments	1,886	1,711	1,487	1,349	6,433	100%
Total Assignments	27,396	23,279	22,346	21,516	94,537	
% of Reassignments of Total Assignments	6.88%	7.35%	6.65%	6.27%	6.80%	

Reassignment Reason	2007	2008	2009	2010	All Years
	Avg Days Between	Avg Days Between	Avg Days Between	Avg Days Between	Avg Days Between
Co-defendant is a client	27.86	25.74	23.45	16.55	24.00
Witness is a client	27.27	29.22	25.57	20.51	26.08
Suspect is a client	28.23	20.28	16.46	15.11	20.19
Victim is a client	23.07	17.21	13.04	13.95	16.74
Court appointed a different agency	118.13	122.71	93.80	56.92	100.96
Client previously represented by different agency	58.89	33.92	32.45	45.12	46.92
Client claims ineffective assistance of counsel	165.22	109.60	114.12	123.97	135.85
Irreconcilable breakdown between client and atty	121.19	182.63	141.53	99.52	133.35
Internal conflict within agency	71.99	76.97	85.07	27.50	65.39
Undisclosable ethical conflict within agency	108.50	191.34	122.22	79.25	117.87
Withdraw plea	233.97	157.24	138.98	144.43	168.45
Client filed a complaint about agency	209.00	51.69			137.09
Client refuses to waive speedy trial rights	17.00	7.00	13.00	8.50	10.17
Client pled guilty	18.67	20.00			19.20

Assigned Counsel Budget and Expenditures

Adopted Budgets

LowOrg	LowOrgDescription	2006	2007	2008	2009	2010	2011	2012	Total	Average
2306	ASSIGNED COUNSEL CVL	44,222	45,106	45,106	45,106	45,106	45,106	18,276	288,028	41,147
2308	ASSIGNED COUNSEL JUVENILE	316,991	323,331	323,331	323,331	323,331	323,331	175,738	2,109,384	301,341
2309	ASSIGNED COUNSEL DEPENDCY	473,442	482,911	482,911	482,911	482,911	482,911	707,007	3,595,004	513,572
2310	ASSIGNED COUNSEL KC MISDE	154,689	157,783	157,783	110,929	99,008	99,008	108,179	887,379	126,768
2311	ASSIGNED COUNSEL FELONY	1,729,747	1,764,342	1,764,342	1,562,342	1,562,342	1,562,342	2,473,538	12,418,995	1,774,142
2313	ASSIGNED COUNSEL FEL PROB	52,691	53,745	53,745	53,745	53,745	53,745	-	321,416	45,917
2316	ASSIGNED COUNSEL DEP REVW	289,093	294,875	294,875	294,875	294,875	294,875	-	1,763,468	251,924
2320	ASSIGNED COUNSL INVOL CMT	3,543	3,614	3,614	3,614	3,614	3,614	3,614	25,227	3,604
		3,064,418	3,125,707	3,125,707	2,876,853	2,864,932	2,864,932	3,486,352	21,408,901	3,058,414

Revised Final Budgets

LowOrg	LowOrgDescription	2006	2007	2008	2009	2010	2011	2012	Total	Average
2306	ASSIGNED COUNSEL CVL	44,222	45,106	45,106	45,106	45,106	45,106	18,276	288,028	41,147
2308	ASSIGNED COUNSEL JUVENILE	316,991	323,331	323,331	323,331	323,331	323,331	175,738	2,109,384	301,341
2309	ASSIGNED COUNSEL DEPENDCY	673,442	544,637	545,942	777,786	482,911	482,911	707,007	4,214,636	602,091
2310	ASSIGNED COUNSEL KC MISDE	154,689	157,783	157,783	110,929	99,008	99,008	108,179	887,379	126,768
2311	ASSIGNED COUNSEL FELONY	1,879,747	2,355,887	2,899,103	1,562,342	1,786,087	1,562,342	2,473,538	14,519,046	2,074,149
2313	ASSIGNED COUNSEL FEL PROB	2,691	-	53,745	53,745	-	53,745	-	163,926	23,418
2316	ASSIGNED COUNSEL DEP REVW	89,093	-	294,875	-	294,875	294,875	-	973,718	139,103
2320	ASSIGNED COUNSL INVOL CMT	3,543	3,614	3,614	3,614	3,614	3,614	3,614	25,227	3,604
		3,164,418	3,430,358	4,323,499	2,876,853	3,034,932	2,864,932	3,486,352	23,181,344	3,311,621
	Contract budget	30,625,986	29,756,037	31,588,316	30,717,629	30,617,979	28,938,685		33,817,675	
	% of AC Budget	10%	12%	14%	9%	10%	10%		10%	

Actual Expenditures

LowOrg	LowOrgDescription	2006	2007	2008	2009	2010	2011	2012 projections	Total	Average
2306	ASSIGNED COUNSEL CVL	20,283	12,018	24,480	22,550	12,977	9,179	1,535	103,023	14,718
2308	ASSIGNED COUNSEL JUVENILE	218,960	180,260	239,320	196,980	206,920	198,773	91,666	1,332,879	190,411
2309	ASSIGNED COUNSEL DEPENDCY	584,799	562,510	569,119	576,741	697,167	684,261	769,491	4,444,088	634,870
2310	ASSIGNED COUNSEL KC MISDE	203,717	137,870	128,749	136,589	126,462	160,140	154,554	1,048,081	149,726
2311	ASSIGNED COUNSEL FELONY	1,926,924	2,446,357	2,828,502	2,586,150	2,396,746	2,949,873	3,083,842	18,218,393	2,602,628
2316	ASSIGNED COUNSEL DEP REVW								-	-
2320	ASSIGNED COUNSL INVOL CMT				203	1,334	2,452	6,566	10,554	1,508
	Public Defense Improvement Support		7663.5	368272.05	350939.47	781911.65	655204.74	883000	3,046,991	435,284
		2,954,683	3,346,678	4,158,442	3,870,151	4,223,518	4,659,883	4,990,654	28,204,010	4,029,144

PDIF is a state grant which is used to add \$5 to hourly rate in all case areas except following: