



## WSBA COUNCIL ON PUBLIC DEFENSE MEETING AGENDA

**December 6, 2024**  
**9:30am – 12:00pm**

**Join by Video Conference:**

**For video and audio:** <https://wsba.zoom.us/j/86831734727?pwd=JdPRPtrj3zUwG7Vm54liXXDo85uKa5.1>

**For audio only: LOCAL OPTION:** (253) 215-8782 || **TOLL-FREE OPTION:** (888) 788-0099

**Meeting ID:** 868 3173 4727 || **Passcode:** 892144

The purpose of the meeting is for the Council to discuss, deliberate, and take potential final action regarding the following agenda items:

5 min	<b>Welcome and Introductions</b>	Maialisa Vanyo	Discussion	
3 min	<b>November Meeting Minutes</b>	Maialisa Vanyo	Action	pp 2-3
20 min	<b>Admission to Practice Reform</b>	Renata Garcia, WSBA Chief Regulatory Counsel	Discussion	pp 4-8
60 min	<b>How to Effectively Collect and Present Data on Public Defense</b>	Brett Schandelson, Director of the State of Montana's Office of Public Defender	Discussion	pp 9-19
30 min	<b>Standards Implementation</b>	Maialisa Vanyo	Discussion	
10 min	<b>Subcommittee Sign Ups</b>	Maialisa Vanyo	Discussion	
5 min	<b>Announcements</b>	Everyone	Announcement	

**The next regular CPD meeting will be January 24, 2025, via Zoom**  
**Agenda will include a presentation on investigator and mitigation specialist pipelines.**

Find Council on Public Defense guiding documents and initiatives online at <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/council-public-defense>.

Reasonable accommodations for people with disabilities will be provided upon request. Please email [bonnies@wsba.org](mailto:bonnies@wsba.org).



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Washington State Bar Association

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COUNCIL ON PUBLIC DEFENSE  
NOVEMBER 1, 2024 - 9:30AM – 12:00PM  
MINUTES

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**CPD Voting Members:** Maialisa Vanyo (Chair), Christopher Swaby (Vice-Chair), Arian Noma, Victoria Blumhorst, Jason Schwarz, Paul Holland, Jonathan Quittner, Judge Dee Sonntag, Maya Titova, Louis Frantz, Molly Gilbert, Christie Hedman, Anita Khandelwal, David Montes, Jonathan Nomamiukor, Abraham Ritter, Karen Denise Wilson

**CPD Emeritus members (non-voting members):** Bob Boruchowitz, Kathleen Kyle, Ann Christian, Eileen Farley

**WSBA Staff:** Cate Schur, Bonnie Sterken, Diana Singleton

**Guests:** Gideon Newmark, George Yeannakis, Sophia Byrd McSherry, Molly Fraser, Ali Hohman, Katrin Johnson, Liz Mustin, Angela Colaiuta, Lei Young, Grace O’Conner, Geoff Hulsey, Grace O’Connor, Rachel Cortez, Brett Ballew, Sarah Hudson

**Absent:** Leandra Craft, Justice Sheryl Gordon McCloud, Larry Jefferson, Abigail Pence, Judge Marla Polin

**Minutes:** The October meeting minutes were approved without edits

**WSBA DEI Plan:** Diana Singleton presented the history of the WSBA DEI plan and the current draft plan. She presented the data from a DEI study that uncovered a lack of diversity in the legal profession and the dispirit impact on underrepresented groups. She summarized the draft plan at a high level and provided instructions on how to provide feedback. The Council had a discussion and Diana addressed questions. There was a discussion about passing the bar exam and getting licensed more accessible. It was noted that WSBA leadership would like time on a future agenda to gather ideas on how to influence changes.

**OPD Budget Request and Updates:** A draft letter of support for the OPD budget request and additional needs was included in the meeting materials for discussion and action. Maialisa Vanyo reported on some updated numbers in the OPD budget since the materials were shared.

Sophia Byrd McSherry provide additional context and updates to the amounts being requested. Sophia addressed questions on the details of the requests. The Council had a discussion.

Jason Schwarz moved to approve submitting the letter to the BOG for action, including edits discussed in the meeting, and Christie Hedman seconded. Motion passed with a supermajority and one abstention.

**Mandated Report for Law School Clinics:** Paul Holland reported on the issue of all higher education staff being mandated reporters. This conflicts with client confidentiality requirements in law school clinics. Paul is working with other policy makers to propose an amendment to create an exception for law school clinics. He has drafted a letter for the CPD to sign on to support this effort. The Council had a discussion.

Abe Ritter moved for the CPD to support the letter and submit it to the Board of Governors for further action, and Maya Titova seconded. The motion passed with a supermajority and one abstention.

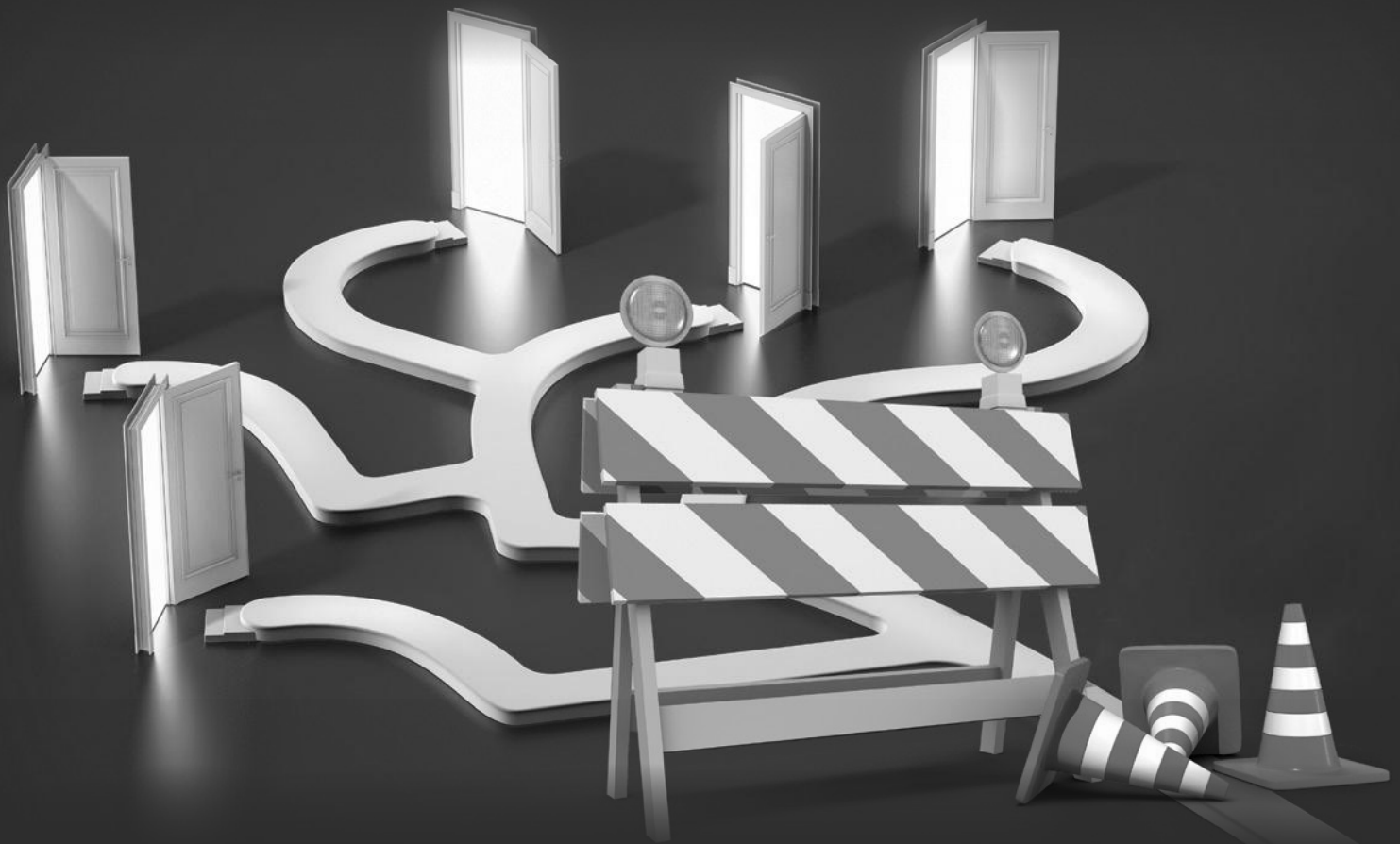
**Standards Implementation Updates:** Jason Schwarz summarized the conversations at the last meeting about implementation timelines. There are other conversations happening with the Board of Judicial Administration. He shared a summary of what other groups are submitting to the Court. Jason is collecting those responses and will share a summary after the weekend. Council members were asked to encourage line defenders to submit their comments to the Court. The Council had a discussion.

**Committee Work:** Maialisa Vanyo summarized the committee work for the coming year, including updates to Appendix B of the Standards, CPD recruitment, and Charter. Other topics for this coming year include looking at public defender data, investigative pipelines and investments, and new avenues to becoming licensed. She reminded members to share their interest with what committee to join.

The meeting adjourned at 10:39

Changes to Attorney Pathways to Licensure  
and New Ways to Measure Competency:

# YOUR QUESTIONS ANSWERED



CONTINUING COVERAGE: PART 2

## BRIEF HISTORY

Following three years of work by the court-created Washington Bar Licensure Task Force, the Washington Supreme Court entered orders on March 15: (1) adopting the NextGen Bar Exam, with first administration to be in July 2026; and (2) adopting in concept recommendations to implement a graduate apprenticeship, a law school experiential pathway, and an APR 6 apprenticeship as additional pathways to attorney licensure.

The July/August issue of *Bar News* focused on the NextGen Bar Exam. With a bar exam remaining as a pathway (and likely the primary pathway) to attorney licensure, this issue takes a closer look at—and answers some of the (many) questions asked about—the additional pathways to licensure.

## PART 2

### New Pathways to Licensure Approved in Concept by Washington Supreme Court—Now Under Construction

#### PRELIMINARY PATHWAY QUESTIONS

**Q** Is Washington alone in creating alternative pathways to licensure?

**A** No. Across the country, from primary schools to universities to professional-certification processes like medical licensing, compelling data is causing more and more institutions to create alternatives to high-stakes assessments, with a growing body of research that supports performance-based assessments. In the bar-exam realm, Wisconsin and New Hampshire have for years provided ways to demonstrate competency other than the bar exam. In November 2023, Oregon adopted an apprenticeship pathway for law-school graduates. High courts in many jurisdictions—including California, Minnesota, Utah, Nevada, and South Dakota—are creating and/or considering similar alternative pathways.

**Q** Are we “dumbing down” lawyer admissions in Washington so everyone gets in?

**A** No, the intent is to tie the process of becoming a lawyer more closely to skills and competencies. Under the new pathways, every candidate will have to pass a rigorous, skills-based demonstration of competency to earn a law license. The court was persuaded by the research evaluated by the Washington Bar Licensure Task Force (WBLTF), which stated in its report:

The best available data indicates that the bar exam disproportionately and unnecessarily blocks historically marginalized groups from entering the practice of law. In addition to the racism and classism written into the test itself, the time and financial costs of the test reinforce historical inequities in our profession. Despite these issues, data indicates that the bar exam is at best minimally effective for ensuring competent lawyers. Among the deficiencies and common complaints about the bar exam is that it bears little resemblance to actual practice and tends to simply restate the same results already provided by law school grades.

For these reasons and others, the WBLTF proposes creating additional, experiential pathways to bar licensure that protect the public by improving lawyer skills while reducing the unproductive barriers for historically marginalized groups to enter the profession. This proposal would have a substantial positive impact on the profession using the existing infrastructure in law schools and WSBA.

A Proposal for the Future of WA State Bar Admissions Updated Following Public Comment February 28, 2024 (footnotes omitted), available at [https://www.courts.wa.gov/appellate\\_trial\\_courts/SupremeCourt/?fa=supremecourt.LicensureTaskForce.1](https://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.LicensureTaskForce.1)

**Q** Who is building the new pathways?

**A** The Washington Supreme Court’s March 15 order directed the WSBA to convene a Licensure Steering Committee

to propose rule changes and identify next steps necessary to implement the recommendations. The Steering Committee will be composed of 18 people drawn from many of the entities and communities impacted by the new pathways to lawyer licensing. (The application period for service on the committee closed Aug. 9.) The role of the Steering Committee is to provide high-level direction and decision-making for the implementation process. For information on the makeup of the committee and its role, see [www.wsba.org/Legal-community/Committees-Boards-and-Other-Groups/pathways-to-licensure-steering-committee](http://www.wsba.org/Legal-community/Committees-Boards-and-Other-Groups/pathways-to-licensure-steering-committee). It is anticipated that the Steering Committee’s work will continue for at least 18 months.

#### THE 3 PATHWAYS

##### 1 Graduate Apprenticeship

**Synopsis:** Law school graduates who successfully complete a six-month program consisting of practice under the guidance and supervision of a qualified attorney plus completion of standardized Admission and Practice Rule (APR) 6 (the Law Clerk Program) coursework may waive out of the bar exam.

**The details:** This pathway will be built on an existing foundation—the tutoring and licensing requirements already codified in APR 6 (Law Clerk Program) and APR 9 (Licensed Legal Intern Program).

APR 6 creates Washington’s Law Clerk Program, by which an individual may gain qualification to sit for the bar exam without attending law school. Applicants must (among other requirements) “be of good moral character and fitness,” be a full-time employee of an approved tutor in a “(i) law office, (ii) legal department, or (iii) court of general, limited, or appellate jurisdiction in Washington State,” and complete four years of coursework at a rate of six courses per year. Tutors must be approved by the WSBA; every tutor must be a member in good standing with no disciplinary sanctions in the last five years and must

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## Changes to Attorney Pathways to Licensure and New Ways to Measure Competency: Your questions answered

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have practiced for at least 10 of the last 12 years, with at least two of those years taking place in Washington. [Note: As part of this proposal the WBLTF recommended reducing the practice requirement for tutors to 7 of the last 10 years.]

APR 9 creates Washington's Licensed Legal Intern Program, by which an individual can be authorized to practice law in a limited and supervised capacity prior to obtaining a full license. An applicant must (among other requirements) be a law student or graduate in good standing who has completed at least two-thirds of their coursework and who has permission from the dean of their law school. Supervising attorneys must be active members in good standing who have practiced for at least three years and who have no disciplinary sanctions at all in the last three years and no suspensions or disbarments in the last 10 years.

Under this proposal law school graduates who wish to become licensed through an apprenticeship would need to meet the requirements of APR 9, and their supervising tutors would be required to meet the requirements of APR 6. This would allow graduates to gain practical skills and demonstrate knowledge through the experience of practicing for six months under the guidance and supervision of a qualified attorney. Graduates would also be required to complete six months of the standardized APR 6 coursework or three courses.

**Why was it recommended?** The WBLTF recommended this pathway as giving Washington more control over the admission of its lawyers, reducing the costs to admission, and creating a less-biased path to entry into the profession while simultaneously ensuring that licensed lawyers have the practical skills and training needed to practice. Acknowledging that historically the APR 6 Law Clerk Program has struggled to find tutors, the WBLTF did not believe this pathway

## MORE INFORMATION

Bar News coverage is continuing—future issues will address investigation and potential implementation of ongoing assessment of lawyers' competence throughout their careers and potential changes to the character and fitness assessment for lawyer licensure. You can also visit the WSBA's New Licensing Alternatives webpage for ongoing updates.

[www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways](http://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways).



would face the same barriers because it is a shorter program that will provide a benefit to law firms: Firms could hire recent graduates who are immediately productive, with no time off needed to study for the bar exam or await results.

## 2 Law School Experiential Pathway

**Synopsis:** Law students who wish to graduate practice-ready and waive out of the bar exam would be required to complete 12 qualifying skills credits and 500 hours of work as an APR 9 licensed legal intern or equivalent providing legal services to actual clients. As part of their bar application, law students would be required to submit a portfolio representing work done during their 500 hours.

**The details:** This experiential pathway would draw upon existing law school courses and ABA standards as well as APR 9 and similar rules to ensure that students have both training and experience in practical lawyering skills at graduation. Under the ABA's law school accreditation standards, law schools are required to offer practical skills courses and students are required to complete at least six skills credits to graduate. Law schools offer a variety of coursework under the skills category such as mediation, pretrial

advocacy, negotiations, criminal motions practice, and contract drafting. These courses have been developed and made mandatory as part of an increasing push in the legal industry to ensure that law schools are teaching not just how to think like a lawyer but how to practice like a lawyer. APR 9 allows law students to practice law under the guidance and supervision of a qualified attorney. Many other states have similar programs. In Indiana, Admission and Discipline Rule 2.1 creates the "Legal Interns" program, which lets students who have completed half of their law school coursework (including some specific classes like ethics) engage in supervised practice. Oregon's Rule for Admission 13 creates a "Law Student Appearance Program" for students who have completed four semesters of coursework. As APR 9 says, these programs play "an important role in the development of competent lawyers and expand[] the capacity of the Bar to provide quality legal services while protecting the interests of clients and the justice system." [Note: This pathway would require APR 9 to be amended to change the law-coursework-completion requirement from completing two-thirds of candidates' legal education to completing one-half of their legal education.]

**Why was it recommended?** The WBLTF felt that encouraging further engagement in the APR 9 program serves the WSBA's mission "to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice." The credit requirement of 12 qualifying skills credits will provide a substantial boost to new graduates' practical lawyering skills, while the 500 hours of work as a licensed legal intern or equivalent providing legal services to actual clients will provide the experience necessary to be practice-ready. Law students would be required, as part of their bar application, to submit a portfolio representing work done during their 500 hours.

### Q Why 500 hours for law school apprenticeship?

A Five hundred hours ensures that qualifying students have had practical experience above and beyond the basic activities that most law students will accomplish. Most law students will have

a 2L summer job  
spending 10 weeks  
working in a legal capacity.

For students who chose to register  
under APR 9 for that summer, those 10  
weeks would constitute 400 hours. That  
would require students to get an additional  
100 hours of experiential work during their  
3L year to complete the program (about  
three hours of work per week).

**Q Do law schools have to provide  
opportunities for students to  
achieve the required 500 apprenticeship  
hours within the curriculum?**

**A** No. Given that most law students  
engage in legal work during  
their 2L summer, it is assumed that  
the majority of students who chose to  
pursue an experiential path will obtain  
most or all of the required 500 hours  
in externships, which can include paid  
summer work and work during the  
school year. While some law schools will  
likely choose to distinguish themselves  
by offering additional opportunities, the  
WBLTF's proposal does not impose any  
requirements on law schools, and it is  
expected that different law schools will  
make different choices consistent with  
their individual academic considerations.

**Q Are law schools obligated to offer  
the experiential track to students?**

**A** No. The WBLTF proposal does not  
in itself mandate any action from law  
schools. It is assumed that law schools,  
especially those in Washington, will want to  
offer an experiential pathway to licensure  
to their students. However, law schools  
may place caps on the number of students  
who can participate each year based on  
whatever needs and criteria the individual  
school chooses. Students who are unable  
to graduate and immediately waive out of  
the bar will still have the opportunity to  
participate in a graduate apprenticeship and  
obtain a license through that program. For  
students who are not able to participate in  
the experiential track, law schools that wish  
to help will still have an opportunity to aid  
those students in obtaining apprenticeships

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## PROFESSIONAL ETHICS

**Ethics Advice  
Bar Discipline  
Disqualification Motions  
Fee Disputes  
Judicial Ethics  
Judicial Discipline**

**Bellingham Muni. Court v. City of Bellingham,**  
Whatcom Cty. Cause No. 21-2-00541-37 (2022) (disqualification of Bellingham City Attorney)  
**Plein v. USAA Cas. Ins. Co.,** **Arden v. Forsberg & Umlauf,**  
195 Wn.2d 677, 463 P.3d 728 (2020) (RPC 1.9) 189 Wn.2d 315, 402 P.3d 245 (2017) (RPC 1.7)  
**LK Operating, LLC v. Collection Group, LLC,**  
181 Wn.2d 48, 331 P.3d 1147 (2014) (RPC 1.8)

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## YOUR APPEAL SPECIALISTS

**Gardens Condominium v. Farmers Ins.  
Exchange,**

2 Wn.3d 832, 544 P.3d 499 (2024) (amicus brief for  
insured on ensuing loss provision)

**Hartford Fire Ins. Co. v. FC Leschi, LLC,**

2024 WL 1856692 (2024) (reversing trial court  
coverage, extracontractual award against insurer)

**Gordon v. Robinhood Financial, LLC,**  
547 P.3d 945 (2024)

(reversing excessive fee sanction award)

**Selim v. Fivos, Inc.,**  
2024 WL 3423716 (2024) (concluding that Washington,  
not Egyptian, law applied in employment case)

**Scott v. City of Tacoma,**  
28 Wn. App. 2d 1050, 2023 WL 7327746 (2023),  
(summary judgment for city on attenuated causation  
grounds reversed)

**Ebbeler v. WFG National Title Co.,**  
29 Wn. App. 2d 1049, 2024 WL 692684 (2024)  
(reversing dismissal of contract and negligence claims  
against escrow agent)

**EHouse Dev., LLC v. Lam,**

27 Wn. App. 2d 1055, 2023 WL 5202420 (2023)  
(affirming seller's retention of non-refundable  
payment in real estate sale)

**Nay v. BNSF Ry. Co.,**  
2023 WL 5740244 (2023) (reversing dismissal on  
federal preemption grounds of rail crossing claims)

**Jones Estate v. State of Wash.,**  
2 Wn.3d 93, 534 P.3d 822 (2023) (reversing dismissal  
of childhood sexual abuse claims against  
State on statute of limitations grounds)

**Aguda v. Aguda,**  
25 Wn. App. 2d 1069, 2023 WL 2570709 (2023)  
(successfully dismissing appeal as untimely)

**Schireman v. Williams,**  
26 Wn. App. 2d 1003, 2023 WL 2645875 (2023)  
(reversed trial court's submission of case-within-case  
causation to jury in legal malpractice action)

**Dr. Conklin v. Univ. of Washington  
School of Medicine,**  
1 Wn.3d 1011, 528 P.3d 362 (2023) (reversing and  
holding University of WA liable for PRA violations)

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## Changes to Attorney Pathways to Licensure and New Ways to Measure Competency: Your questions answered

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in much the same way the schools aid in obtaining first jobs out of school.

### 3 APR 6 Apprenticeship

**Synopsis:** In order to waive out of the bar exam, APR 6 law clerks would have to complete additional standardized education materials and benchmarks (beyond the APR 6 requirements) under the guidance and supervision of their tutors.

**The details:** APR 6 law clerks would be required to satisfy the same 500-hour requirement of providing legal services to actual clients (which they can do while they are participating in the Law Clerk Program) as an APR 9 licensed legal intern or equivalent is required to do under the Law School Experiential Pathway.

**Why was it recommended:** Historically, a path to licensure through study and apprenticeship under a licensed lawyer has operated since the beginning of the legal profession without any identifiable harm to the public. The existing APR 6 program already accomplishes the goal of training individuals in the experiential side of the practice of law. In addition, APR 6 law clerks are required to complete coursework and be assessed on that coursework throughout the program; participating law clerks and tutors create their own curriculum and exams for all of the required coursework, whereas a standardized exam like the bar exam puts perceptions of APR 6 law clerks on a level playing field with law school graduates. To create an alternative to the bar exam for APR 6 law clerks, the WBLTF recommended the creation of additional standardized educational materials and benchmarks that APR 6 law clerks must complete under the guidance and supervision of their tutors to be eligible to waive the bar exam. The WBLTF further recommended that this Law Clerk Admission Coursework

## ASK US QUESTIONS

Send your questions to [alternativepathways@wsba.org](mailto:alternativepathways@wsba.org). Letters to the editor in response to *Bar News* coverage may be sent to [wabarnews@wsba.org](mailto:wabarnews@wsba.org).

be developed by the WSBA, in conjunction with the Washington law schools and the Law Clerk Board, to dovetail with the requirements of the Law School Graduate Apprenticeship.

## MORE ANSWERS

**Q Will there be a way to tell who became licensed via one of the new pathways versus the bar exam?**

**A** No. Right now, the manner in which someone becomes licensed (e.g., via passing a bar exam, by diploma privilege, or by completing the APR 6 Law Clerk Program) is confidential and not subject to disclosure; we do not anticipate a change to that when new pathways to licensure become available to applicants. Under APR 1(d)(1), “Unless expressly authorized by the Supreme Court or by the applicant, all application records, including related investigation files, documents, and proceedings for admission or for a license to practice law or for enrollment in the law clerk program are confidential and shall be privileged against disclosure, except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules.” The WSBA’s lawyer directory available to the public lists only public information including license status, eligibility to practice, and date of admission.

**Q Will there be a difference in the cost and availability of malpractice insurance for lawyers who use a pathway other than the bar exam to demonstrate competency for licensure?**

**A** We do not anticipate that the admission path someone chooses will impact their ability to become insured and the cost

of their malpractice insurance. According to Chris Newbold, chief operating officer and executive vice-president of ALPS, the WSBA-endorsed professional liability insurer, “ALPS does not anticipate a difference in the cost or availability of malpractice insurance for those who pursue and ultimately are licensed by alternative licensure pathways. A condition of attaining a professional liability policy as a private practitioner is to be admitted to practice in the state as set forth by licensure requirements of the Washington Supreme Court. For the foreseeable future, we do not anticipate adding a question as to how licensure was attained on a malpractice insurance application. Thus, we’d be unaware of the licensure path on any submitted application.”

**Q Do we know how the 2020 diploma privilege recipients<sup>2</sup> are faring, where they are employed, and how many grievances have been filed against them (if any)?**

**A** The WSBA plans on surveying diploma privilege recipients regarding their experience in seeking employment and their current employment and will report out results in a future issue of *Bar News*. Information regarding grievances filed against lawyers is confidential.

**Q Will there be incentives for more experienced lawyers to serve as supervisors/tutors?**

**A** Tutors in the APR 6 Law Clerk Program are eligible to earn CLE credit for the time spent providing personal supervision. This option will likely be explored for supervisors in the new pathways. **BN**

## NOTES

1. Much of the information in this article is taken from the WBLTF report cited and from the Alternative Pathways to Bar Licensure FAQ, available at [www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways](http://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/pathways).
2. In June 2020, in response to the COVID-19 pandemic, the Washington Supreme Court granted “diploma privilege” (licensure without taking/passing the bar exam) to most applicants for the summer 2020 bar examination.



## **Policy 201 – Ethical Case Management**

### **1) Ethical Case Management**

- A. The Office of State Public Defender (OPD) shall utilize Ethical Case Management (ECM) to:
  - i) ensure individuals assigned by OPD to represent, investigate, or support OPD clients are assigned a reasonable volume of work and are able to provide ethical, competent, and effective representation, services, and support to each matter and client assigned in accordance with this policy, OPD's Standard Operating Procedures (SOPs), OPD's Practice Standards, the Montana Rules of Professional Conduct, any relevant judicial or ethics opinions, and any rules, standards, or canons promulgated by any relevant licensing authority; and,
  - ii) provide predictable, consistent, and standardized matter management processes, protocols, and procedures that ensure client matters and related records contain relevant, timely, accurate, and necessary information to effectively provide public defender services.
- B. To implement the provisions of this policy, OPD shall adopt SOPs, which are incorporated by reference into this policy. These SOPs define and document each activity, assignment, process, protocol, and procedure necessary to implement ECM, including mandating that certain information be entered into OPD's case management system at certain stages or in certain ways throughout a record's lifecycle.
- C. Unless otherwise specified, any reference to a "public defender" in this policy shall refer to both an attorney employed by OPD, an FTE public defender, as well as an external attorney providing public defender services pursuant to a Memorandum of Understanding (MOU), a contract public defender.
- D. Failure or refusal to comply with the provisions of this policy, the SOPs, or directives from management regarding Ethical Case Management shall be subject to appropriate discipline.

### **2) Matter Management**

- A. All OPD matters shall be managed within OPD's case management system, pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively manage client matters, and which shall, at a minimum, require that the matter record, together with all related records, data, files, documents, and other information is the sole source of official information regarding OPD matters.
- B. OPD employees shall utilize OPD's case management system for all work performed on behalf of an OPD client pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively utilize OPD's case management system by assignment, activity, or role.
- C. All contractors, vendors, and service providers shall utilize OPD's case management system as required by their Memorandums of Understanding (MOUs) or Service Agreements (SAs) and pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively utilize OPD's case management system by assignment, activity, or role for all work performed on behalf of an OPD client.
- D. **Client Contact Information**
  - i) Ensuring up-to-date, accurate client contact information in OPD's case management system is critical as individuals providing representation, investigation, or services to OPD clients

must be able to rely on the accuracy of client information in OPD's case management system. Further, clients' contact information is utilized throughout OPD's case management system, including providing client access to the client portal and a series of automations within OPD's case management system, such as providing automatic notice of events and messaging through multiple communication channels.

- ii) Client contact information shall be managed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively manage client contact information in OPD's case management system, and which shall, at a minimum, require that OPD employees make regular and routine efforts to ensure a client's contact information on file is up-to-date and accurate.

#### **E. Matter Initiation**

- i) A new matter shall be created in OPD's case management system when the new matter represents a new unit of work subject to matter weighting under this policy.
- ii) All new matters shall be created pursuant to the SOPs which document the procedures, timelines, and mandatory information required to open a new matter in OPD's case management system, and which shall, at a minimum, require that, within all reasonable efforts, new matters be created within one business day of OPD receiving notice of the obligation to provide representation.

#### **F. ECM Weighting Protocol**

- i) Each individual matter, as well as certain assignments, activities, or roles, are assigned a weight which represents the number of hours the matter, assignment, activity, or role is estimated to take over the matter, assignment, activity, or role's lifecycle. The ECM Weighting Protocol shall be performed pursuant to the SOPs, which document the procedures, values, and mandatory information required to effectively and appropriately weigh each matter, assignment, activity, and role with the estimated number of hours that the matter, assignment, activity, or role should take to work to completion.
- ii) ECM Weights are estimates, designed to ensure an individual is given an appropriate and reasonable amount of work, and the actual number of hours required for an individual matter, assignment, activity, or role will vary.
- iii) The ECM Weighting Protocol shall be periodically validated, and adjusted as necessary, pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively modify the ECM Weights, and which shall, at a minimum, require that employee time tracking, contractor invoicing, employee feedback, relevant national standards, OPD's practice standards, relevant ethical standards, and common-sense be considered in the validation or adjustment of the estimated hours associated with an individual matter, assignment, activity, or role.
- iv) Most ECM weights are automatically calculated based on the following protocol and statute weight tables:

##### **(1) Criminal and Juvenile Matters**

- (a) OPD's case management system creates a "Charge Weight" for each matter, which is the highest value of all statute weights associated with all charges related to the matter, as identified in the tables below. The "Charge Weight" will dynamically update as charges are added, amended, or dismissed.

- (b) The “Charge Weight” will stop dynamically updating 45 days after the matter was received. Regional Public Defenders or Division Administrators may adjust the “Charge Weight” after this time if they determine the matter has substantially changed.
- (c) OPD’s case management system will create a “Matter Enhancement” weight for an individual matter if the matter has 5 or more active charges as identified in the tables below.

**(2) All Other Matter Types**

- (a) OPD’s case management system creates a “Charge Weight” for each matter that has the value of the matter type as identified in the tables below.
- (b) DN – Abuse & Neglect Matters are weighted per petition or family, as appropriate, and not by the number of children related to the petition or family.

**(3) User Activity Weights**

- (a) Various user activity weights provide weight hours as identified in the tables below.

**Criminal & DJ Matter Types ECM Statute Weights**

<b><u>Statute Weight Hours</u></b>	<b><u>Statute Desc.</u></b>	<b><u>Statute Code Reference</u></b>
2.5	Fugitive/Out of County Warrant	- Various
3	Haebus Corpus Writ	- 46-22-101
3	All City/County Ordinance Violations	- Various
3	All Traffic Offenses, except DUI Crimes	- All Misd Title 61-X-XXX <i>except 61-8-10XX crimes</i>
3	Disorderly Conduct, Obstructing a Peace Officer, and MIP Crimes	- 45-8-101 - 45-7-302 - 45-5-624
3	Sentence Review	- 46-18-903
3.5	Misdemeanor Petition to Revoke	- 46-18-203 - 41-5-1431
6	Felony Petition to Revoke	- 46-18-203 - 41-5-1431
7	Lower Court Appeal	- 46-17-311
7	Misd. Crimes, except Misd. Sex Crimes, and Misd DUI Crimes	- All Misd Title 45, <i>except 45-5-5XX and 45-5-7XX</i> - All Misd Title 61-8-10XX
10	Misd. Sex Crimes	- All Misd Title 45-5-5XX - All Misd Title 45-5-7XX
10	Felony Property, Public Order, and Public Administration Crimes	- All Felony Title 45-6-XXX - All Felony Title 45-7-XXX - All Felony Title 45-8-XXX
15	Felony Dangerous Drugs and DUI Crimes	- All Felony Title 45-9-XXX - All Felony Title 61-8-10XX

20	Felony Theft and Offenses Against Person, <i>except Felony Sex and Homicide Crimes</i>	<ul style="list-style-type: none"> <li>- All Felony Title 45-6-3XX</li> <li>- All Felony Title 45-5-XXX, <i>except 45-5-5XX and 45-5-7XX</i></li> </ul>
50	Felony Sex Crimes	<ul style="list-style-type: none"> <li>- All Felony Title 45-5-5XX</li> <li>- All Felony Title 45-5-7XX</li> </ul>
100	Homicide Crimes	<ul style="list-style-type: none"> <li>- All Felony Title 45-5-1XX</li> </ul>

#### **Civil Matter Types ECM Statute Weights**

<u>Statute Weight Hours</u>	<u>OPD Matter Type</u>	<u>Statute Desc.</u>	<u>Statute Code Reference</u>
4	DD	Developmental Disability	- 53-20-128
4.5	DI	Involuntary Commitment	- 53-21-121
5	DG	Guardianship	- 72-5-321
20*	DN	Abuse & Neglect	- 41-3-422
20	DPA	Private Adoption	- 42-5-101
<i>* only one charge row per DN matter and only one child matter per petition or family shall be weighted 20 ,all others shall use the 0 weight statute</i>			

#### **Miscellaneous ECM Weights**

<u>Weight</u>	<u>Weight Desc</u>	<u>Weight Type</u>	<u>Weight Added by</u>	<u>Weight Criteria</u>
3	EPS Hearing Coverage	User	Automatically by AdvOPD	Weight given to an attorney assigned to a matter as an EPS Attorney
7	Misd Matter Enhancement	Matter	Automatically by AdvOPD	5 or more charges in a single matter
10	Felony Matter Enhancement	Matter	Automatically by AdvOPD	5 or more charges in a single matter with 1 or more Felony charges
Varies	Travel Weight	User	Automatically by AdvOPD	Average of prior three months' time tracked to "Travel"
Varies	Treatment Court Coverage	User	Automatically by AdvOPD	Average of prior three months' time tracked to treatment court matters
Varies	Unassigned Initial Appearance Coverage	User	Automatically by AdvOPD	Average of prior three months' time tracked to "Unassigned Initial Appearances"
Varies	Co-Counsel Weight	User	Manual when adding co-counsel participant	Weight given to co-counsel participant

#### **G. Conflicts of Interest Protocol**

- i) To ensure any potential conflict of interest is identified and appropriately addressed in a timely manner, all matters shall be screened for potential conflicts of interest to determine if assignment of, or continued representation by, an identified public defender, Office, Region, or Division complies with this policy, OPD's Standard Operating Procedures, OPD's

Practice Standards, the Montana Rules of Professional Conduct, any relevant judicial or ethics opinions, and any rules, standards, or canons promulgated by any relevant licensing authority. Conflict of Interest screening shall be performed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to screen a matter for potential conflict of interest, and which, at a minimum, shall require that:

- (1) Legal Assistants shall screen matters for potential conflicts of interest upon matter creation, assignment of new counsel, and any addition of a participant to the matter record; and,
  - (2) Public defenders shall screen matters for potential conflicts of interest upon receipt of discovery and any other relevant information obtained, observed, or received throughout their representation.
- ii) An identified conflict of interest shall immediately be submitted, reviewed, and determined pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to properly submit and determine a potential conflict of interest, and which, at a minimum, shall require that the request contain sufficient detail to determine whether an actual or risk of a conflict of interest exists and, within all reasonable efforts, that the correct Regional Public Defender or Division Administrator review and determine a submitted conflict of interest within two (2) business days of submission.
  - iii) If an actual conflict of interest in a matter is identified, or if the risks of an actual conflict developing are so high as to outweigh the benefits of continued representation, and if no waiver of the conflict of interest is obtained from the client, the matter shall be reassigned pursuant to the SOPs, which documents the procedures, timelines, and mandatory information required to process an identified conflict of interest, including removing or reassigning an assigned public defender and transferring ownership of the matter to another Office, Region, or Division, not subject to the identified conflict or potential conflict of interest.
  - iv) During the time a conflict request is pending determination, and unless and until the matter is reassigned to another attorney, any public defender representing an OPD client shall continue to appear at scheduled court hearings and shall, to the extent reasonably practicable, continue to protect and secure the client's interests.

#### **H. Documenting Matter Participants**

- i) To provide for timely identification of conflicts of interest, provide ample opportunity to prepare for litigation, effectively advise clients on an effective course(s) of action, provide effective data on the usage of external service providers, expert witnesses, and law enforcement, identification of witness specific issues, such as witness credibility or *Brady* issues, and to ensure an accurate record of the individuals involved in a matter is recorded, certain participants must be added to the matter record pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively add participants to the matter record, and which shall, at a minimum, require the following participants be added as soon as possible after the individuals listed below can be identified:
  - (1) Any known or identified individual likely to be relevant to the matter, including individuals identified in a ticket, complaint, information, petition, report of violation, or other matter-initiating documents;

- (2) Any individual identified as a party in the matter or in a related matter, such as a co-defendant;
- (3) Any individual identified in a witness list by any party in the matter;
- (4) Any individual identified as an expert witness by any party in the matter; and,
- (5) Any individual approved to provide representation, investigation, or services to an OPD client.

**I. Matter Calendar, Events, and Deadlines**

- i) The matter calendar within OPD's case management system is the official calendar of events and deadlines related to the matter and shall be managed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively manage matter calendars within OPD's case management system, which shall require, at a minimum, FTE public defenders to ensure their calendars, including events and deadlines, are backed up in an independent way, which may be met by connecting OPD's case management system to their state provided exchange account.
- ii) For the purposes of this policy and the SOPs, the following terms have been defined:
  - (1) An event within OPD's case management system means a hearing, meeting, or appointment where one or more attendees will gather at a specific place at a specific time, such as a court hearing, deposition, or client appointment.
  - (2) A deadline within OPD's case management system means a date or date and time by which a particular act must be completed or accomplished, such as a filing, discovery, or notice due date.

**J. Employee Time Keeping and Matter Notes**

- i) All OPD employees providing representation, investigation, or services to OPD clients shall enter their time worked, together with contemporaneous notes of their activities with sufficient detail to ensure:
  - (1) continuity of effective client services through any other individual(s) providing representation, investigation, or services to the client;
  - (2) accurate and effective data on employee activities, including ensuring the accuracy of weights created or informed by employee time tracking; and,
  - (3) identification of areas where additional employee training, resources, or support are needed.
- ii) Employee time and matter notes shall be entered pursuant to the SOPs, which document the procedures, timelines, and mandatory information required for effective employee time tracking and matter notes in OPD's case management system, and which shall, at a minimum, require that time and notes be entered daily and must be related to a specific matter, unless the time kept is not matter related.
- iii) Employee time shall be reviewed by supervisors pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to ensure timely, accurate, and effective record of an employee's time and activities is recorded, and which shall, at a minimum, require that supervisors review employee time tracking weekly.
- iv) Employee matter notes shall be reviewed by supervisors pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to review matter notes, and which shall, at a minimum, require that supervisors review matter notes with sufficient regularity to ensure compliance with this policy.

**K. Official Matter File**

**i) For Matters Assigned to FTE Public Defenders**

- (1)** The matter record in OPD's case management system, together with all related records, constitute the official OPD matter file, which shall be managed pursuant to the SOPs, and shall contain all documents, data, files, or other information relevant to the matter, including information regarding the client, court hearings, other events, deadlines, tasks, time entries, notes, pleadings, and discovery.
- (2)** The official matter file does not include the file(s) of an external provider, such as a mental health provider, investigator, case manager, social worker, or expert witness unless the file(s) have been provided to OPD, utilized in the representation of an OPD client, and/or made part of the official matter filing cabinet.
- (3)** All official OPD matter files are the property of the State of Montana, Office of State Public Defender, and are subject to retention and destruction in compliance with the rules established by the Montana Secretary of State, this Policy, and the SOPs, which document the procedures, timelines, and mandatory information required for retention and destruction in OPD's case management system.

**ii) For Matters Assigned to Contract Public Defenders**

- (1)** Contract public defenders representing OPD clients shall maintain, retain, and destroy the matter file in compliance with the rules established by the Montana Secretary of State, their MOU with OPD, this Policy, and the SOPs, which document the procedures, including notice to the contract public defender of retention and destruction timelines, and mandatory information required for retention and destruction in an OPD assigned matter file.

**iii) Client Matter File Access**

- (1)** Clients shall be provided matter information and documents during the pendency of a matter pursuant to the Montana Rules of Professional Conduct and the SOPs, which document the procedures, timelines, and mandatory information required to provide client matter file access, including any necessary redaction or removal of information or documents.
- (2)** Client matter file access may be provided through an electronic OPD client portal, where clients may view their matter information, essential participants, charges, including sentences and dispositions, scheduled court hearings, court filings, plea offers or agreements, and any discovery that is not subject to a protective order or other prohibition on dissemination to the client.

**iv) Client Requests for Client Matter Files**

- (1)** Upon request, and within the OPD's file retention schedule, clients are entitled to receive a copy of their entire matter file free of charge, excluding any information, data, or documents subject to protective order or other prohibition on dissemination to the client.
- (2) For Matters Assigned to an FTE Public Defender**
  - (a)** Upon final disposition of a client's matter, clients shall be notified of their rights to and the procedures for requesting a complete copy of their OPD matter file.
  - (b)** Dissemination of matter files to clients shall be made pursuant to the SOPs, which document the procedures, including any necessary redaction or removal of

information or documents, timelines, and mandatory information required for dissemination of matter files to clients, which, absent good cause, shall be provided electronically through the OPD Client Portal, Montana Secure File Transfer, or through physical media, such as a thumb drive or disc.

**(3) For Matters Assigned to a Contract Public Defender**

- (a)** Requests for a client's file shall be made directly to or referred to the contract public defender and fulfilled by that contract public defender pursuant to their MOU with OPD, this Policy, and the SOPs, which document the procedures, including any necessary redaction or removal of information or documents, timelines, and mandatory information required for dissemination of matter files to clients, and which shall, at a minimum, include the contract public defender's billing and invoice records.

**L. Matter Disposition**

- i) Matters shall be disposed of pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively dispose of a matter in OPD's case management system, which shall, at a minimum, require that public defenders review their open and inactive matters monthly to identify which matters are ready to be disposed and:
- (1)** for matters assigned to an FTE public defender:
- (a)** any documents, data, files, or other relevant information residing outside of OPD's case management system has been scanned, entered, or otherwise documented within OPD's case management system; and,
- (b)** matters ready to be disposed are disposed in OPD's case management system within ten (10) business days of being identified.
- (2)** for matters assigned to a contract public defender:
- (a)** all dispositional information has been entered into OPD's case management system; and,
- (b)** matters ready to be disposed are disposed in OPD's case management system within thirty (30) days of being identified.
- ii) Matters are ready to be disposed in OPD's case management system when the assigned public defender has completed all necessary representation in the matter, including:
- (1)** reviewing the final judgement, opinion, or order;
- (2)** taking any action necessary to protect the client and preserve their rights; and,
- (3)** has advised the client of their rights to any appeal, sentence review, or other collateral review or rights.

**M. Matter Appeal**

- i) Matters shall be appealed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively and timely initiate an appeal on behalf of an OPD client, and which shall, at a minimum, require that prior to referring a matter for appeal, a public defender shall:
- (1)** consult with the client regarding the advantages and disadvantages of seeking an appeal; and,
- (2)** either:



- (a) receive explicit instructions from the client to initiate an appeal on their behalf; or,
- (b) have a good faith belief that the client desires an appeal based on the consultation in subsection (1) above.

**N. Duration of Public Defender Representation**

- i) A public defender assigned by OPD to represent an OPD client shall continue to represent the client in the assigned matter unless or until:
  - (1) the public defender has completed all necessary representation in the matter, and the time for an appeal or any post-disposition motions has passed;
  - (2) OPD reassigns the matter to another public defender or a non-OPD assigned attorney files a notice of substitution of counsel;
  - (3) a court of competent jurisdiction issues an order rescinding OPD's appointment in the matter; or,
  - (4) a court of competent jurisdiction issues an order removing the public defender as counsel of record in the matter.
- ii) A public defender assigned by OPD to represent an OPD client in a matter shall not file a *Motion to Withdraw*, or otherwise request removal as counsel of record in any matter, without the express approval of a Managing Public Defender, in the case of an FTE public defender, or the Contracts Program, in the case of a contract public defender.

**3) ECM Workload Limitations and Assignment Protocol**

**A. ECM Workload Limitations**

- i) Except as provided for below, assignments of ECM weighted work shall be subject to the following ECM Workload Limitations by role and timeline:

<u>Role</u>	<u>ECM Workload Limitation</u>	<u>ECM Timeline</u>
FTE Trial Public Defender*	Up to 150 new matter weight hours	Calendar Month
FTE Managing Trial Public Defender	Up to 150 new matter weight hours, reduced by 11.25 weight hours for each direct report, with a floor of no less than 37.5 new matter weight hours	Calendar Month
FTE Regional Public Defender	37.5 new matter weight hours	Calendar Month
* an FTE trial public defender joining the agency with less than two (2) years' experience as a practicing attorney shall be assigned no new matter weight for the first two (2) weeks of employment and assigned a gradually increasing amount of matter weight over an eight (8) week period until the ECM workload limit is reached.		

- ii) **Exceptions to ECM Workload Limitations:** An individual may be assigned ECM weighted work over the ECM Workload Limitations only in the following, limited circumstances:
  - (1) If the individual providing representation, investigation, or services to an OPD client is currently working on behalf of the same OPD client in another active matter in the same court;

- (2) If the individual's active ECM weighted workload has been materially reduced due to reassignment of existing ECM weight work to other individuals, but only by an amount reasonably commensurate with the ECM weight of work being reassigned;
- (3) If the individual has been hired or transferred into a new office, practice area, or role, and is being assigned an initial ECM weighted workload; or,
- (4) If the individual is absorbing all or part of the active ECM weighted workload of another individual that is transferring to a new practice area or role, is no longer licensed, is exiting the agency or going on leave, or is otherwise unavailable to complete the ECM weighted work previously assigned.

**B. ECM Matter Assignment Protocol**

- i) All matters pending assignment shall be assigned pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively assign matters in OPD's case management system.

**ii) Public Defender Matter Assignments**

- (1) Matters pending assignment to a public defender beyond the timelines listed in this protocol shall be managed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively manage unassigned matters, and which shall, at a minimum, require that OPD make all reasonable efforts to keep the client and the court informed regarding the status of assignment of counsel.

**(2) FTE Public Defender Matter Assignments**

- (a) Matters pending FTE public defender assignments and reporting regarding current FTE assignments shall be reviewed daily by a Managing Public Defender, Regional Public Defender, or a Division Administrator.

**(b) Assignment Protocol**

- (i) Matters pending assignment to FTE public defenders shall be assigned within the initiating or conflict office pursuant to the following factors:
  - 1. the order in which the matter was received;
  - 2. the age of the matter;
  - 3. the matter type;
  - 4. whether the client is incarcerated;
  - 5. the matter's timeline, including the next critical or substantive hearing date;
  - 6. whether the client has other active matters in the same court with the same judge;
  - 7. the initiating office's ECM Workload Metrics; and,
  - 8. the efficiency of assignment.
- (ii) Within all reasonable efforts, matters able to be assigned to an FTE public defender within ECM Workload Limitations shall be assigned to an FTE public defender within three (3) business days of the initiating office receiving the matter.
- (iii) Matters unable to be assigned to an FTE public defender within the initiating office due to ECM Workload Limitations shall be referred to the relevant conflict office for assignment to an FTE public defender within the same three business days of the initiating office receiving the matter.

- (iv) Within all reasonable efforts, matters able to be assigned to an FTE conflict public defender within ECM Workload Limitations shall be assigned to an FTE conflict public defender within three (3) business days of the conflict office receiving the matter.
- (v) Matters unable to be assigned to an FTE public defender within the conflict office due to ECM Workload Limitations shall be referred for assignment to a contract public defender within the same three (3) business days of the conflict office receiving the matter.

**(3) Contract Public Defender Matter Assignments**

- (a)** Matters pending assignment to a contract public defender and reporting regarding current contracting public defender assignments shall be reviewed by the Contracts Program daily.

**(b) Assignment Protocol**

- (i)** Matters pending assignment to contract public defenders shall be assigned to contract public defenders pursuant to the following factors:
  - 1. the order in which the matter was received;
  - 2. the age of the matter;
  - 3. the matter type;
  - 4. whether the client is incarcerated;
  - 5. the matter's timeline, including the next critical or substantive hearing date;
  - 6. whether the client has other active matters;
  - 7. the available contract public defenders and their workloads; and,
  - 8. the efficiency of assignment.
- (ii)** Within all reasonable efforts, matters able to be assigned to a contract public defender shall be assigned within seven (7) business days of the contracts program receiving the matter.
- (iii)** Regardless of priority, matters shall be assigned to contract public defenders within this seven (7) day period if there is an available contract public defender willing to accept assignment, though lower priority matters shall only be offered to the contract public defender after all reasonable efforts to assign higher priority matters have been made.
- (iv)** Matters unable to be assigned to contract public defender within a reasonable time shall be returned to the initiating or requesting office's assignment queue for assignment to an FTE public defender within their ECM Workload Limitations.