



Wisconsin State Public Defender

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CR 10-134

Order of the Office of the State Public Defender

The State Public Defender proposes an order amending PD 6.01, amending PD 6.015, amending PD 6.02, creating PD 6.02, amending PD 6.025, creating PD 6.025(4), amending PD 6.03(1) and (3), amending PD 6.04, repealing PD 6.04(2), renumbering and amending PD 6.04(3)(4) and (5), creating PD 6.045, amending PD 6.05, creating PD 6.055, amending 6.06, 6.07 and 6.08, relating to determining, collecting and processing the payments received from persons as payment for legal representation.

Analysis prepared by the State Public Defender

The Office of the State Public Defender (SPD) provides constitutionally-mandated legal representation to persons who meet financial eligibility standards. Those persons charged with crimes, who do not qualify for State Public Defender Representation, but cannot afford to hire an attorney, must be provided an attorney at county expense. This is commonly referred to as a “Dean” appointment. See, *State v. Dean*, 163 Wis.2d 503 (CA 1991).

SPD eligibility standards have not been updated since 1987. Thus, with continued rise in the cost of living, there has been an increase in the number of individuals applying to the counties for Dean appointments. Wisconsin counties reported spending nearly \$7.6 million in 2008 to appoint counsel for these indigent individuals.

Recognizing the financial burden to the counties, and need to revise the financial eligibility criteria for SPD representation, 2009 Wisconsin Act 164, published March 29, 2010, mandated that financial eligibility standards for public defender representation be consistent with income guidelines of Wisconsin Works (W2). To carry out these changes, Act 164 directs the Wisconsin State Public Defender Board to promulgate rules regarding the revised determination of indigency. In promulgating these rules Act 164 directs the SPD to consider the costs of effective representation for the type of case in which a person seeks representation, and to consider a person’s assets in the manner described in s. 49.145 (Wisconsin Works).

Tying eligibility for representation to W2 (sec. 49.145(3)(a) Stats.) increases the number of clients served by the State Public Defender Agency. An increase in the number of persons who qualify for representation by the State Public Defender has a corresponding decrease in the costs to counties. Act 164 shifts, to a large extent, the responsibility of providing representation for the “working poor” from the counties to the State.

To implement the Act 164 changes, which go into effect June 19, 2011, the SPD has drafted revisions to Administrative Rules PD 3 (indigency criteria) and PD 6 (reimbursement of legal fees).

Text of Proposed Rule
Chapter PD 6

SECTION 1. PD 6 (title) is amended to read:

CHAPTER PD 6, REIMBURSEMENT OF LEGAL FEES PAYMENT FOR STATE PUBLIC DEFENDER REPRESENTATION

SECTION 2. PD 6.01 is amended to read:

PD 6.01 Repayment Payment of attorney costs for legal representation. Except as provided in ss. PD 6.02 to ~~6.05~~ 6.055, a person who is responsible for payment for legal representation provided by the state public defender shall ~~reimburse the state public defender for~~ contribute to the cost of the legal representation according to the following schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$7500	Misdemeanor	\$240
Other Class A or B Felony	\$1200	Parole/Probation Revocation	\$240
Sexual Predator (s. 980.02) Chapter 980 Proceedings	\$1200	Juvenile Felonies Felony/TPRs Termination of Parental Rights	\$480
Other Felony	\$480	Other Juveniles Juvenile	\$240
Commitment (including ss. 980.08, 980.09) (Chapter 51)	\$120	Special Proceeding	\$120
Chapter 55	\$480	Paternity	\$240
Appellate/ trial Category I	\$1200	Appellate/ plea Category II	\$480

SECTION 3. PD 6.015 (title), (1) (a), (b) and (c) are amended to read:

PD 6.015 Written notice of repayment payment obligation for legal representation. (1)
The state public defender shall provide the following information in writing to all persons subject to ~~repayment~~ payment for legal representation of attorney costs under s. 977.075 (1g), Stats.:

- (a) The optional ~~prepayment~~ discount amount in s. PD 6.02.
- (b) The maximum amount the person may be required to pay under the applicable fee schedule in s. PD 6.01.

(c) The schedule for periodic payments if the person does not pay the optional ~~prepayment discount~~ amount.

SECTION 4. PD 6.02 (title), (1) and (2) are amended to read:

PD 6.02 Prepayment Discount option. (1) A client may elect to ~~prepay pay~~, within 60 days of appointment of counsel by the state public defender, the optional ~~prepayment discount~~ amount for the cost of representation specified in the following ~~prepayment fee~~ schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$600	Misdemeanor	\$60
Other Class A or B Felony	\$120	Parole/Probation A Revocation	\$60
Sexual Predator (s. 980.02) Chapter 980 Proceedings	\$120	TPR Termination of Parental Rights	\$60
Other Felony	\$60	Special Proceeding	\$30

Chapter 980 Post-commitment Proceeding \$30	Paternity	\$60
	Appellate II	\$60
	Appellate I	\$120

(2) If a client pays the optional ~~prepayment discount~~ amount under sub. (1), the client is not liable for any additional payment for public defender legal counsel for that case.

SECTION 5. PD 6.02 (3) is created to read:

(3) The 60 day time period in sub. (1) may be extended for good cause.

SECTION 6. PD 6.025 (1), (2) (a), and (3) are amended to read:

PD 6.025 Determination of ability to pay. (1) The state public defender shall determine whether persons subject to ~~repayment payment of attorney costs~~ for legal representation have the ability to pay all, or part of, the costs of representation. A person with ~~any income or assets in excess of the payment amount specified in s. 49.19 (11) (a) 1.,~~ income in excess of the amount specified in s. 49.001 (5), Stats., or assets available to pay the costs of legal representation under s. PD 3.03 (2) has the ability to pay some amount toward these costs. The state public defender may defer the determination of ability to pay until after the time period for payment of the optional ~~prepayment discount~~ amount specified in s. PD 6.02 has expired.

(2) The state public defender may determine that a person has the ability to pay under any of the following circumstances:

(a) The person is determined to have ~~family income and assets in excess of the payment amount specified in s. 49.19 (11) (a) 1., Stats.~~ income in excess of the amount specified in s. 49.001 (5), Stats., or assets available to pay the costs of legal representation under s. PD 3.03 (2), as recreated in Clearinghouse Rule 10-133.

(3) The state public defender may periodically review a person's ability to pay and may rely upon information obtained from employment and tax records to determine ability to pay. When a person originally unable to ~~repay pay attorney costs~~ for legal representation is later determined to have the ability to pay, the state public defender shall send notice of a periodic payment schedule to the person's last known address.

SECTION 7. PD 6.025 (4) is created to read:

PD 6.025 (4) This section does not apply to persons subject to reimbursement under s. PD 6.05 or 6.055.

SECTION 8. PD 6.03 (1) and (3) are amended to read:

PD 6.03 Multiple related charges. (1) If multiple related charges for one client are issued on separate complaints, the state public defender ~~or designee~~ may waive the reimbursement fee for cases opened under any of the following circumstances:

(3) Waiver of reimbursement fees under this section applies both to the reimbursement fee under s. PD 6.01 and the optional ~~prepayment~~ discount amount under s. PD 6.02.

SECTION 9. PD 6.04 (intro) is amended to read:

PD 6.04 Multiple appointments on the same case. When the same case results in multiple state public defender appointments of counsel for a client for any of the following reasons, the client shall not be charged ~~one reimbursement~~ an additional fee for the case:

SECTION 10. PD 6.04 (2) is repealed.

SECTION 11. PD 6.04 (3), (4) and (5) are renumbered PD 6.04 (2), (3) and (4) and amended to read:

PD 6.04 (2) The client requested substitution of counsel ~~under s. PD2.04.~~

(3) The client retained a private attorney who withdrew before completion of the case.

(4) The client's ~~case was remanded for granted~~ a new trial after a reversal the judgment was vacated on ineffective assistance of counsel grounds.

SECTION 12. PD 6.045 is created to read:

PD 6.045 Reimbursement from clients with changed circumstances. (1) The state public defender may, subject to s. 977.075 (3m), Stats., assess a payment amount in excess of the applicable amount in s. PD 6.01 if the client is responsible for payment under s. 977.075, Stats., and after counsel is appointed by the state public defender, does not meet the financial criteria specified in s. PD 3.03.

(2) In assessing a payment amount under sub. (1), the state public defender shall consider the costs of providing the client with representation and the point in the applicable proceeding at which the client no longer met the financial criteria specified in s. PD 3.03.

SECTION 13. PD 6.05 is amended to read:

PD 6.05 Reimbursement from parents of juveniles. (1) Pursuant to ss. 48.275 (2) (b) and 938.275 (2) (b), Stats., when the court orders reimbursement by the parent of a juvenile, the amount of the reimbursement ~~fee~~ shall be the amount specified in the fee schedule in s. PD 6.01, subject to the following:

(a) The parent may request, within 30 days of the reimbursement order, that the state public defender determine whether the parent is indigent. If the parent does not make this request or if the parent is determined not to be indigent, the reimbursement ~~fee~~ shall be the amount specified in the fee schedule in s. PD 6.01.

(b) If the parent is determined to be partially indigent pursuant to s. PD ~~3.038 (1) (b)~~ 3.03 (7), currently Clearinghouse Rule 10-133, the reimbursement ~~fee~~ shall ~~be equivalent to 20% not exceed 25% of the applicable cost of retaining counsel in the case, as set forth amount specified in the applicable schedule~~ in s. PD ~~3.02 (4)~~ 6.01. If the parent is determined to be indigent, no reimbursement ~~fee~~ shall be assessed.

(2) The state public defender shall report to the court that ordered reimbursement the result of the indigency determination and the amount of the reimbursement ~~fee~~ to be assessed.

(3) If reimbursement by both parents is ordered, the parents are jointly and severally liable for the obligation. The maximum amount for which both parents are obligated is the amount of the reimbursement ~~fee~~ under s. PD 6.01.

SECTION 14. PD 6.055 is created to read:

PD 6.055 Reimbursement from persons represented in civil commitment or chapter 55 proceedings. (1) Except as provided in sub. (2), when the court orders reimbursement under s. 51.605 (1) or 55.107 (1), Stats., from a person for whom the state public defender has appointed an attorney in a proceeding under ch. 51 or 55, Stats., the amount of the reimbursement shall be the amount specified in the schedule in s. PD 6.01 for a commitment, if the case was filed under ch. 51, Stats., or for a ch. 55, Stats., case, whichever is applicable.

(2) Upon the court's request at or after the conclusion of the proceedings, the state public defender shall conduct a determination of indigency and report the results of the determination to the court.

(a) If the state public defender is unable to obtain the necessary financial information or if the person is determined not to be indigent, the reimbursement shall not exceed the amount specified in the applicable schedule in s. PD 6.01.

(b) If the person is determined to be partially indigent as provided in s. PD 3.03 (8), the reimbursement shall not exceed 25% of the amount specified in the applicable schedule in s. PD 6.01.

(c) If the person is determined to be indigent, no reimbursement may be assessed under s. 51.605 or 55.107, Stats.

SECTION 15. PD 6.06, 6.07, and 6.08 are amended to read:

PD 6.06 Referral to department of administration. The state public defender shall refer to the department of administration a collection account of a person who has been determined able to pay, ~~and~~ has not paid the optional ~~prepayment~~ discount amount, ~~if the person~~ has been given a monthly payment schedule and has missed a monthly payment by more than ten days.

PD 6.07 Representation regarding ~~repayment~~ payment of attorney fees. The state public defender shall not provide representation to a person on the issue of the ~~repayment~~ payment amount owed to the state public defender.

PD 6.08 Reports on status of collections. The state public defender shall submit quarterly reports to the joint committee on finance and to the department of administration regarding the collection of payments ordered under ss. 48.275 (2), 51.605, 55.107, 757.66, 938.275, 977.06, 977.075, and 977.076, Stats. These reports shall include the amount collected and the amount of accounts receivable referred to the department of administration during each reporting period.

This rule shall take effect on June 19, 2011.

Dated: _____

Agency: _____

Dan Berkos, Chair
Wisconsin State Public Defender Board