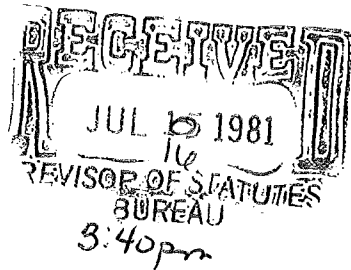


SPD 1



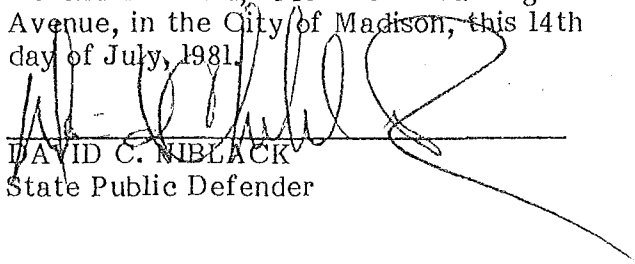
STATE OF WISCONSIN)
) SS
STATE PUBLIC DEFENDER BOARD)

TO ALL TO WHOM THESE PRESENTS SHALL COME,
GREETINGS:

I, David C. Niblack, State Public Defender, of the State Public Defender Board and custodian of the official records do hereby certify that the annexed rules relating to attorney certification for client representation were duly approved and adopted by this Board on June 4, 1981.

I further certify that this copy has been compared by me with the original on file with this Board and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand of the State Public
Defender Board, 340 West Washington
Avenue, in the City of Madison, this 14th
day of July, 1981.



DAVID C. NIBLACK
State Public Defender

9-1-81

NOTICE

Order of the Office of the State Public Defender amending Rule SPD 1.04, Wis. Adm. Code, relating to rules concerning attorney certification for client representation. Analysis prepared by the Office of the State Public Defender.

ANALYSIS:

Findings of fact and statement of need: The proposed rules amend the certification criteria established in SPD 1.04, Wis. Adm. Code, to provide two categories of certification standards for felonies. Prior to this, one category existed, which did not address the range of cases classified as felonies. The proposed rules would provide that felony certification relate to the maximum penalty of the offense. For example, certification to represent a felony offense bearing a maximum penalty of twenty or more years requires different experience than an offense bearing a lesser penalty. The proposed rules also include certification standards for appellate representation.

Hearing: Because these rules are proposed under the thirty-day notice under s. 227.02(1)(e), Stats., no public hearing has been requested or required.

Legislative Council recommendations: The following response is made to Legislative Council comments on Clearinghouse Rule 80-215. These comments are attached to this notice, and the outline below relates to each item as identified by the Council.

2. Form, style, and placement in Administrative Code:
 - a. Form for submittal to Clearinghouse-corrected;
 - b. Format for amendments to existing rules-corrected;
 - c. Internal numbering-corrected;

d. Definitions-Parentheses have been removed from material in the test, as this is consistent with the rule change.

e. Gender-specific terms. This term relates to already existing Administrative Code. Since this material was mistakenly submitted to the Legislative Council, this comment will be considered in future revisions of the State Public Defender Administrative Code.

4. Adequacy of References to Related Statutes, Rules and Forms-corrected.

5. Clarity, Grammar, Punctuation, and Plainness:

a. Surplusage-The phrase "graduated from law school" has been eliminated to clarify certification requirements.

b. Typographical errors-corrected.

Pursuant to authority vested in the Office of the State Public Defender by ss. 977.02(8) and 977.08, Stats., the Office of the State Public Defender proposes to amend SPD 1.04, Wis. Adm. Code, as follows:

SECTION 1. SPD 1.04(1) of the Wisconsin Administrative Code is repealed and recreated to read:

SPD 1.04 Certification criteria

(1) An attorney shall be certified for misdemeanor, chapters 48, 51, and 55 representation, conditions of confinement, and probation and parole revocation cases if:

- (a) The attorney has requested certification;
- (b) The attorney is admitted to the state bar of Wisconsin; and
- (c) The attorney has completed the continuing legal education requirements as provided in sub. (7).

(2) An attorney shall be certified for felony cases involving a felony offense bearing a maximum penalty of less than 20 years imprisonment if:

- (a) The attorney has requested certification;

- (b) The attorney is admitted to the state bar of Wisconsin;
- (c) The attorney has completed the continuing legal education requirements as provided in sub. (7); and

(d) Either:

- 1. Has served one year as a prosecutor;
- 2. Has served one year as a public defender;
- 3. Has been trial counsel alone of record in five misdemeanor cases brought to final resolution;
- 4. Has been trial counsel alone of record in two felony cases brought to final resolution; or
- 5. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two cases, civil or criminal, that have been tried to a jury to final resolution.

(3) An attorney shall be certified for felony cases involving a felony offense bearing a maximum penalty of 20 or more years imprisonment if:

- (a) The attorney has requested certification;
- (b) The attorney is admitted to the state bar of Wisconsin;
- (c) The attorney has completed the continuing legal education requirements as provided in sub. (7); and

(d) Either

- 1. Has served two years as a prosecutor;
- 2. Has served two years as a public defender; or
- 3. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in five cases, civil or criminal, that has been tried to a jury to final resolution.

(4) An attorney shall be certified for appellate cases if:

(a) The attorney has filed a brief in the Wisconsin Supreme Court or Wisconsin Court of Appeals in no less than one felony case or two misdemeanor cases since July 1, 1978, and has completed the continuing legal education required by these rules; or

(b) The attorney has attended in person or by video tape, a presentation which covers in detail the Wisconsin Rules of Appellate Procedure which has been approved in advance by the chief of the appellate unit of the State Public Defender's office, and has also completed the continuing legal education required by these rules; or

(c) The attorney has any other equivalent appellate experience deemed satisfactory to the chief of the appellate division, including appellate briefs submitted in other jurisdictions, detailed trial level briefing, or other approved work, and has completed the continuing legal education required by these rules.

SECTION 2: SPD 1.04(2), (3), and (4) are renumbered (5), (6), and (7) respectively.

SECTION 3. SPD 1.04(4) of the Wisconsin Administrative Code is amended to read:

(4) Continuing legal education. ~~Commencing January 1, 1979, any~~ Any attorney certified under these rules shall complete seven hours of continuing legal education each calendar year in courses approved by the executive board of the criminal law section of the state bar of Wisconsin.


FISCAL ESTIMATE:

Currently, the Office of the State Public Defender assigns a certain percentage of cases to the private bar for representation. The Public Defender Board establishes criteria to certify attorneys to provide such representation. These

standards consider the legal education and experience of each attorney. The proposed rules would amend the original rules. Therefore, there is no state fiscal effect, as the proposed rules do not impact expenditures for cases, but instead impacts those who will qualify to represent such cases.

These rules take effect the first day of the first month after its publication.

6-4-81
Date

Signed:


DAVID C. NIBLACK
State Public Defender