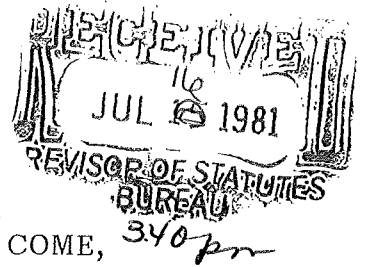


SPD 1 to 3

STATE OF WISCONSIN)
) SS
STATE PUBLIC DEFENDER BOARD)

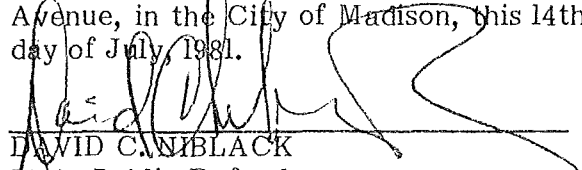


TO ALL TO WHOM THESE PRESENTS SHALL COME,
GREETINGS:

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 certification lists and determination of indigency 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 to renumber SPD 2.03(2) to (4); to amend SPD 2.02(1), 2.03(1), 3.03(2), and 3.05; and to create SPD 1.06, 2.01(5), and 2.03(2) to (4), relating to rules concerning certification lists and determination of indigency.

Analysis prepared by the Office of the State Public Defender.

ANALYSIS:

Findings of fact and statement of need: The requested administrative rule changes for the Office of the State Public Defender relate to three areas of operation.

SPD 1.06 creates a procedure to remove a private attorney from certification lists. Such a procedure does not currently exist.

The revisions to SPD 2 and SPD 3.05 provide procedures for the State Public Defender and county designees to follow in determining indigency. These revisions formalize the process already followed by the State Public Defender, yet are necessary because the determinations are made by county designees in the counties where State Public Defender staff are not present.

SPD 3.03(2) provides that indigency is based on the levels established for qualifying AFDC recipients. This standard was previously established at 150% of those levels. It is expected that some reduction in caseload may result from this modification, but it is impossible to estimate at this time.

Hearing: Pursuant to s. 227.02(1)(e), Stats., these rules have been proposed through use of the 30-day notice procedure. No petition of hearing has been received.

Legislative Council recommendations: The following response is made to Legislative Council comments on Clearinghouse Rule 80-238. 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. Use of virgules-clarified;
- d. Numbering-corrected;
- e. Unnecessary repetition of text-eliminated.

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

5. Clarity, Grammar, Punctuation, and Plainness:

- a. Redundant language-clarified;
- b. Need for definition-The Legislative Council recommended that "cause" be defined in SPD 1.06. "Cause" will be defined by the Public Defender Board as they review each situation.

Pursuant to authority vested in the Office of the State Public Defender by ss. 977.02(4) and 977.02(3) and interpreting Chapter 977, Stats., the Office of the State Public Defender proposes to renumber SPD 2.03(2) to (4); to amend SPD 2.02(1), 2.03(1), 3.03(2), and 3.05; and to create SPD 1.06, 2.01(5), and 2.03(2) to (4), relating to certification lists and determination of indigency as follows:

SECTION 1. SPD 1.06 and SPD 2.01(5) of the Wisconsin Administrative Code are created to read:

SPD 1.06 Removal from certification lists for cause. (1) Any interested party may request, in writing, that an attorney, previously certified to accept cases from the state public defender, be removed for cause. Upon receipt of such

request, the state public defender shall conduct an investigation thereof. Upon a finding of cause, the state public defender may suspend the attorney from certification or may refer the attorney to the state public defender board with a recommendation for removal.

(2) Upon a recommendation for removal, or following the suspension of such attorney and the state public defender's recommendation for removal, the board shall review such investigation and recommendation. Upon request of such attorney prior to its review of the state public defender's investigation and recommendation, the board shall conduct a hearing at which time the attorney in question may be heard and produce evidence in defense thereof. Upon a finding of cause, the board may remove such attorney. The board shall render a decision within sixty days of the hearing.

(3) Any attorney removed for cause may petition a circuit court for review of the decisions of the state public defender board pursuant to the provisions of ch. 227 of the Wisconsin Statutes.

(4) The state public defender board may send a copy of its findings and order to the state bar of Wisconsin or to the district attorney of the county where the action arose for any further action or investigation as may be appropriate.

(5) The board may, in its discretion, appoint any number of its members to conduct the hearing and to report its findings and recommendations to the entire board for its decision.

SPD 2.01 (5) "County designee" means the person, department, office, officer, board or agency selected by the county board and, where appropriate, approved by the state public defender, to do indigency determinations pursuant to s. 977.07(1), Wis. Stats.

SECTION 2. SPD 2.02(1) of the Wisconsin Administrative Code is created to read:

SPD 2.02 Emergency assignment procedure. (1) In any emergency situation the state public defender or county designee shall evaluate the person for indigency as soon as possible.

SECTION 3. SPD 2.02(1) is renumbered SPD 2.02(2) and is amended to read:

(2) In any emergency situation, and after the indigency evaluation of a person, the representative of the state public defender shall assign the attorney who is located the nearest to where counsel is required and who is available to provide representation, whether such attorney is a staff public defender or private attorney.

SECTION 4. SPD 2.03 is amended to read:

SPD 2.03 Regular assignment procedure. (1) As soon as it is brought to the attention of a representative of the office of the state public defender or county designee, that a person who claims or appears to be indigent is entitled to or has requested counsel, a ~~person designated by~~ the state public defender or county designee shall contact that person for the purposes of assisting that person in completing the indigency questionnaire. ~~; and a staff or designated attorney will determine whether that person is entitled to publicly compensated counsel under the criteria established by Chapter SPD 3.~~

SECTION 5. SPD 2.03(2), (3), and (4) are renumbered (5), (6), and (7) respectively, and SPD 2.03(2), (3), and (4) are created to read:

(2) The state public defender and county designee shall be available 24 hours per day including weekends and legal holidays. The state public defender and county designee shall provide to county law enforcement agencies, the district attorney, and the county jail the 24-hour telephone number and address of the state public defender or county designee.

(3) The county designee shall, upon finding a person indigent or partially indigent, immediately contact the state public defender for purposes of assignment of counsel.

(4) The county designee shall advise all persons charged with a crime, detained for purposes of juvenile or involuntary civil commitment proceedings, or otherwise facing a legal proceeding which is within the scope of representation provided by the state public defender, prior to their initial court appearance, that they have a right to be represented by an attorney in the proceeding without charge if found indigent or for a partial charge if found partially indigent. The county designee shall also advise all persons prior to their initial appearance that they have a right to a free determination of their eligibility for such legal services. The county designee shall forward to the state public defender on a weekly basis the names, addresses, and case numbers of these persons and the dates on which the contacts were made.

SECTION 6. SPD 3.03(2) and SPD 3.05 of the Wisconsin Administrative Code are amended to read:

SPD 3.03 (2) The amount required to provide the necessities of life, means ~~150%~~ 100% of the standards specified in s. 49.19(1)(a)1, plus other specified, emergency, or essential costs and the costs of posting bond to obtain release.

SPD 3.05 Sworn statement. (1) All persons provided with publicly compensated counsel shall be required to give a sworn statement of their assets, liabilities, and expenses. Such statement shall be a public document.

(2) The state public defender and county designee shall retain all indigency evaluations whether or not a person was determined to be indigent and the county designee shall forward to the state public defender on a biweekly basis copies of all indigency evaluations.

FISCAL ESTIMATE:

The requested administrative rule changes for the Office of the State Public Defender relate to three areas of operation.

SPD 1.06 creates a procedure to remove a private attorney from certification lists. This procedure will not create a significant workload increase since the number of attorney investigations is expected to be small.

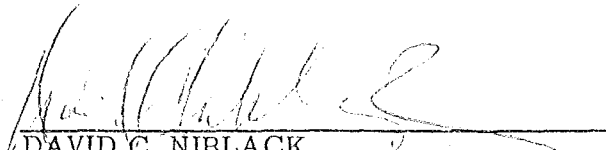
The revisions to SPD 2 and SPD 3.05 provide procedures for the State Public Defender and county designees to follow in determining indigency. These revisions formalize the process already followed by the State Public Defender. Therefore, there is no fiscal effect.

SPD 3.03(2) provides that indigency is based on the levels established for qualifying AFDC recipients. This standard was previously established at 150% of those levels. It is expected that some reduction in caseload may result from this modification, but it is impossible to estimate at this time.

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

Signed:

5-4-81
Date


DAVID C. NIBLACK
State Public Defender