

## Chapter SPD 2

## ASSIGNMENT PROCEDURE

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**SPD 2.01 Definitions.** (1) "Emergency assignment" means any situation in which counsel is required on a legal holiday, Saturday, or Sunday, between 5:00 p.m. and 7:30 a.m., or on less than one hour's notice.

(2) "Regular assignment" means any situation in which counsel is required other than under (1).

(3) "Blind draw" shall mean a procedure such that the person assigning the case does not know in advance whether the case will be assigned to a staff attorney or to a private attorney. It shall consist of a tab system for each county proportionately reflecting the percentage ratio assigned to that county by the board under s. 977.02 (6). No system for each county shall contain more tabs than the immediate preceding year's indigent caseload.

(4) "Board" means the state public defender board.

(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), Stats.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78; cr. (6), Register, August, 1981, No. 308, 9-1-81.

**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.

(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.

(3) Unless the interests of justice require otherwise, the person shall be provided regular counsel under SPD 2.03 and the attorney who provides emergency representation need not continue on the case and need not be permanently assigned.

(4) If it subsequently appears that the person afforded emergency representation is not entitled to publicly compensated counsel, that per-

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son shall be required to compensate the state public defender for such services at the hourly rate established by the board for that county.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78; renum. (1) to (3) to be (2) to (4) and am. (2), cr. (1), Register, August, 1981, No. 308, eff. 9-1-81.

**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, the state public defender or county designee shall contact that person for the purposes of assisting that person in completing the indigency questionnaire.

(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.

(5) If the person is eligible for publicly compensated counsel, a representative of the state public defender shall determine by blind draw as to whether the case is to be assigned to a staff attorney or local private counsel.

(6) If the case is to be assigned to a staff attorney, a representative of the state public defender shall notify the supervising attorney in the appropriate office of the state public defender who shall designate a certain attorney to represent that person.

(7) If the case is to be assigned to local private counsel, a representative of the state public defender shall immediately contact the attorney whose name appears on the top of the appropriate certification list and assign that attorney to represent that person. If that attorney cannot accept the assignment, the next attorney on the list shall be contacted and the first attorney's name shall be placed on the bottom of the list as required by s. 977.08 (3) (c). If the attorney accepts the assignment, that attorney's name shall be placed on the bottom of the list.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1), renum. (2) to (4) to be (6) to (7), cr. (2) to (4), Register, August, 1981, No. 308, eff. 9-1-81.

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**SPD 2.04 Person's right to refuse specific attorney.** (1) A person may request that the attorney assigned to represent him or her be discharged and that another attorney be assigned, and the state public defender shall honor such request, provided:

- (a) It is the only such request made by the person in that case; and
- (b) Such change in counsel will not delay the disposition of the case or otherwise be contrary to the interests of justice.

(2) In the event the court or public defender authorizes an attorney to withdraw as counsel, the state public defender shall assign the attorney who next appears on the top of the appropriate certification list and place the original attorney's name on the top of that list. In the event the attorney discharged is a staff public defender, another staff public defender shall be assigned the case.

*History:* Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**SPD 2.05 Conflict cases.** The state public defender shall not represent more than one person at trial charged in the same case or any client whose interests conflict with any other client. Such cases shall be assigned to private local counsel and compensated as part of the private bar percentage as determined by s. 977.02(6).

*History:* Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**SPD 2.06 Counties in which private counsel may be certified.** Attorneys may be certified only in those counties in which they reside or maintain their principal office, provided, however, in counties in which there are less than 5 attorneys on any certification list, those attorneys residing or maintaining their principal office in one or more adjacent counties may also be certified for that county. In cases of conflict, attorneys certified in adjoining counties may be appointed.

*History:* Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**SPD 2.07 Public representation after case commenced by retained counsel.** (1) If it is necessary for a person to obtain publicly compensated counsel after having retained counsel because of the lack of sufficient funds, the attorney who was originally retained may be assigned and publicly compensated if:

- (a) The court finds that the interests or administration of justice will be severely damaged by a change in counsel; or
- (b) The retained attorney is certified to provide such representation; and

1. It appears that the attorney had a reasonable expectation of receiving his or her entire fee when he or she was retained;

2. Such necessity for publicly compensating this retained counsel has occurred no more than once in the preceding 12 months; and

3. The client and attorney consent.

(2) Such case shall be computed as part of the private bar percentage established under s. 977.02(6).

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(3) Under no circumstances shall the state public defender compensate counsel for services rendered prior to the effective date of assignment by the state public defender.

(4) In the event a representative of the state public defender is appointed as counsel, such case shall be computed as part of the state public defender percentage established under s. 977.02(6).

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**SPD 2.08 Court's right to review indigency determination.** (1) Any person determined by the state public defender not to be eligible for publicly compensated counsel may request that the court having jurisdiction over the case review the state public defender's indigency determination.

(2) After affording the defendant and a staff attorney of the state public defender the opportunity to be heard, such court may order the state public defender to provide representation, and the state public defender shall assign counsel.

(3) Such court-ordered representation shall not preclude a finding of partial indigency and the requirement that the person make partial payment to the state public defender.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**SPD 2.09 Special types of representation.** In the following types of cases private local counsel may be assigned from the indicated certification lists:

(1) Probation, parole, or juvenile aftercare revocation cases — from the certified list relating to the original offense.

(2) Extradition cases — from felony certification list.

(3) Habeas corpus cases (prior to conviction) — from certified list relating to the original offense.

(4) Habeas corpus cases (after conviction) — from appellate certification list.

(5) Post-conviction motion cases — from appellate certification list.

(6) Civil or criminal contempt cases — from misdemeanor or felony certification list.

(7) Extraordinary remedy cases — from felony or appellate certification list, depending on nature of case.

(8) Mental reexamination cases — from civil commitment certification list.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**SPD 2.10 Written notice of assignment.** (1) As soon as a regular assignment of counsel is made, the representative of the state public defender shall provide the clerk of court having jurisdiction over that case, in writing, the name, address, and telephone number of the attorney providing representation.

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(2) In cases assigned to local private counsel, the representative of the state public defender shall send that attorney written confirmation of the assignment showing:

- (a) The effective date of the assignment;
- (b) The type of case, including the court and case number (if known);
- (c) The client's full name, address, and present location;
- (d) Information regarding compensation as provided in chapter SPD 4 of these rules.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**SPD 2.11 Appellate representation.** (1) Appellate representation shall be considered a separate case and reassigned under SPD 2.03 of these rules.

(2) The state public defender shall assign to independent private counsel any case in which a staff attorney of the state public defender's office provided trial representation and it is arguable that the client was not afforded effective representation.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78.

**SPD 2.12 Investigative and expert services for private attorneys.**

(1) The state public defender shall make available to private attorneys assigned under these provisions the services of staff investigators. In the event a staff investigator is not available or is providing services in a conflicting case, the state public defender shall authorize the private attorney to retain such investigatory services as may reasonably be required, and such investigator shall be compensated by the state public defender.

(2) If a private attorney assigned under these provisions finds it necessary to retain expert assistance who will not be compensated by a court, the attorney shall apply to the state public defender for permission to retain such expert assistance. The state public defender shall approve such request unless the state public defender and the chairperson of the board or a board member designated by the chairperson find that such request or the anticipated fee is unreasonable. The state public defender shall compensate the assistance approved under this provision.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78.