

## Chapter PD 1 CERTIFICATION

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Note: Chapter SPD 1 was renumbered chapter PD 1 under s. 13.93 (2m) (b) 1., Stats., Register, July, 1995, No. 475.

**PD 1.01 Annual review.** (1) The state public defender shall annually notify each active member of the state bar of Wisconsin of the procedure for applying for certification under the provisions of s. 977.08, Stats. Publication of a notice in the publication of the state bar of Wisconsin constitutes notice.

(2) The state public defender shall annually update its certification list under s. 977.08, Stats., regarding the availability of private attorneys to be appointed to state public defender matters.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; r. and recr. (1) and (2), r. (3), Register, November, 1984, No. 347, eff. 12-1-84.

**PD 1.02 Certification of newly admitted attorneys.** The state public defender shall provide the Wisconsin supreme court and the state bar of Wisconsin with materials to insure that every person admitted to the state bar after January 1, 1978, is provided with information for applying for certification under s. 977.08, Stats.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. Register, November, 1984, No. 347, eff. 12-1-84.

**PD 1.03 Certification application.** The state public defender shall prepare an application to be completed by attorneys seeking certification as provided in s. 977.08 (3), Stats.

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

**PD 1.04 Certification criteria.** (1) An attorney shall be certified for misdemeanor and paternity cases if the attorney has requested certification and the attorney is admitted to the state bar of Wisconsin.

(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; and
- (c) Either, within the past 5 years:
  - 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 5 misdemeanor cases brought to final resolution;
  - 4. Has been trial counsel alone of record in 2 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 2 cases, civil, criminal, or juvenile, that have been tried to a jury to final resolution.

(2m) (a) Except as provided for in pars. (c) and (d), an attorney shall be certified for the types of cases specified in the following schedule if the attorney has been certified for misdemeanors and has completed the indicated number of credits of state public defender provided legal education:

Type of Case	Credits
Chapters 51 & 55	2
Juvenile—ss. 48.12 and 48.13, Stats.	4

Termination of Parental Rights	4 (plus completion of 4 credits for juvenile certification)
Probation & Parole Revocations	2
Writs & Extradition	1

(b) 1. Paragraph (a) only applies to attorneys who seek certification after January 1, 1993. However, except as provided under subd. 2., any attorney who seeks certification after January 1, 1993 shall be conditionally certified under this subsection for 6 months if he or she agrees, in writing, to complete the indicated number of credits specified in par. (a) within 6 months of the date that he or she was conditionally certified. Upon an attorney's request, the state public defender may extend the conditional certification for an additional 6 months.

2. Conditional certification under this subsection is not available for attorneys who represent clients in termination of parental rights cases or juvenile waiver cases.

(c) With the approval of the state public defender, an attorney may substitute other accredited training for state public defender provided legal education.

(d) An attorney may be assigned a revocation case, whether or not he or she is certified for revocations, when that attorney has a prior pending case with the same client.

(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; and
- (c) Either, within the past 5 years:
  - 1. Has served 2 years as a prosecutor;
  - 2. Has served 2 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 5 cases, civil, criminal, or juvenile, that have been tried to a jury to final resolution.

(5) 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 2 misdemeanor cases within the 3 years immediately preceding the application for certification, and has completed the continuing legal education required by these rules; or

(b) The attorney has completed 3 credits of state-public-defender-provided legal education on appellate procedure; 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.

(6) The state public defender may develop specialized lists within subs. (1) to (5), which may be based on additional certification criteria to be developed by the state public defender. Specialized lists within sub. (3) for cases requiring exceptional expertise may be developed with the approval of the state public defender.

(7) Attorneys employed by the state public defender shall meet criteria equivalent to certified private attorneys.

(8) (a) An attorney may be excluded by the state public defender on the following grounds:

1. The attorney is disbarred, suspended, or has surrendered a license to practice law in this state;
2. The attorney fails to meet the education or experience criteria set forth herein.

(b) The state public defender may exclude from a certified list any attorney barred by statute from engaging in criminal representation.

(c) Any attorney who is excluded from the certification list by virtue of the exclusions set forth herein above shall be placed on the appropriate certification list within 30 days after a submission of a written notification to the state public defender that the attorney is no longer disqualified, provided further that such attorney had previously submitted a timely and properly prepared certification application.

(9) Any attorney certified under ch. PD 1 shall complete 6 hours of continuing legal education each calendar year in courses approved by the state public defender. This requirement shall apply beginning with the first full calendar year following graduation from law school. The state public defender shall establish procedures to monitor compliance with this requirement.

*History:* Cr. Register, May, 1978, No. 269, eff. 6-1-78; am. Register, August, 1978, No. 272, eff. 9-1-78; r. and recr. (1), renum. (2) to (4) to be (5) to (7) and am. (7), cr. (2) to (4), Register, August, 1981, No. 308, eff. 9-1-81; am. (1) (intro.) and (c), (2) (c) and (d) 5., (3) (c) and (d) 3., renum. (4) to (7) to be (5), (7), (8) and (9) and am. (8) (a) (intro.) and 2. and (9), cr. (4) and (6), Register, November, 1984, No. 347, eff. 12-1-84; am. (5) (a), Register, April, 1990, No. 412, eff. 5-1-90; correction in (9) made under s. 13.93 (2m) (b) 4., Stats., Register, April, 1990, No. 412; r. and recr. (1), am. (2) (b), (3) (b), (5) (b), (7), (8) (a) (intro.), (c) and (a), r. (2) (c), (3) (c), (4) and (8) (a) 2., renum. (2) (d) (intro.), (3) (d) (intro.) and (8) (a) 3. to be (2) (c) (intro.), (3) (c) (intro.) and (8) (a) 2. and am., cr. (2m), Register, October, 1992, No. 442, eff. 11-1-92; correction in (9) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475.

**PD 1.05 Appeal of certification decisions.** (1) The state public defender shall notify each attorney who has submitted a certification application of the counties or county and categories for which the attorney is eligible. Upon request by that attorney, the state public defender shall inform the attorney excluded from a particular list of the reasons for the exclusion from a particular list and the manner by which the attorney may appeal the decision or reapply for recertification.

(2) Any attorney may appeal the state public defender's certification decision by mailing a letter of appeal to the state public defender within 30 days of the notice of exclusion. The attorney shall state in the letter the certification from which the attorney has been excluded. The letter may also state the reasons the attorney believes the exclusion was improper.

(3) Upon receipt of an appeal letter, the state public defender shall place the matter on the agenda of the next state public defender board meeting unless that meeting is less than 10 days from the receipt of the appeal letter, in which case the matter may be scheduled for the following meeting. The state public defender shall, at least 10 days prior to hearing, inform the attorney of the time and place of the board meeting at which the appeal will be considered.

(4) The state public defender shall transmit to the board and the attorney all material relied upon in reaching the certification decision, including the certification application and all written comments received under s. 977.08 (3), Stats.

(5) The attorney may request that the state public defender reproduce and submit to the board material relevant to the appeal.

The hearing before the board shall be considered a "class 3" proceeding and is governed by ss. 227.44 to 227.46, Stats.

(6) The state public defender board may deliberate the matter in executive session pursuant to the provisions of s. 19.85 (1) (a), Stats. The board shall issue a written decision either affirming, reversing, or modifying the certification decision of the state public defender. The written decision shall be mailed to the attorney within 20 days of the board meeting and shall be signed by an officer of the board.

(7) The board's written decision shall constitute findings of fact and conclusions of law within the meaning of s. 227.47, Stats.

*History:* Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1) to (6), Register, November, 1984, No. 347, eff. 12-1-84; corrections in (5) and (7), made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1990, No. 412.

#### PD 1.06 Removal from certification lists for cause.

(1) Any interested party, or the assigned counsel chief on his or her own motion, may request, in writing, that an attorney, previously certified to accept cases from the state public defender, be removed for cause. Upon receipt of a 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 any attorney and the attorney's request for review, the board shall review the investigation and recommendation. Upon request of the 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 the attorney or confirm the suspension. The board shall render a decision within 60 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, Stats.

(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.

*History:* Cr. Register, August, 1981, No. 308, eff. 9-1-81; am. (1) and (2), Register, November, 1984, No. 347, eff. 12-1-84; am. (1) and (2), r. (4), Register, October, 1992, No. 442, eff. 11-1-92.

**PD 1.07 Voluntary removal.** Any attorney may request to be removed from any certified list for a specified period of time, and the state public defender shall remove the attorney until notified in writing by the attorney that the attorney wishes to be placed back on the list. If an attorney is inactive for more than 3 years, the attorney shall reapply for certification.

*History:* Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1), Register, November, 1984, No. 347, eff. 12-1-84; am. Register, October, 1992, No. 442, eff. 11-1-92.

**PD 1.08 Access to files.** (1) The state public defender may not disclose to any person except the subject, any comments made by any person who has initiated or responded to an inquiry relating to the fitness of an attorney for certification, unless ordered to do so by the public defender board or a court.

(2) Only certified lists, board proceedings and decisions under these rules shall be considered public documents and open to public inspection.

*History:* Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1), Register, November, 1984, No. 347, eff. 12-1-84; am. (1), Register, October, 1992, No. 442, eff. 11-1-92.