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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-170

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

The implication of s. PD 6.05 (4) is that if a court determines that reimbursement by a guardian of a child's estate is not consistent with the guardian's fiduciary duties, the court may not order reimbursement from the guardian. Under s. 48.275, Stats., a court may not order reimbursement if: (a) the parent is the complaining or petitioning party; (b) the court finds that the interests of the parent and the interests of the child in the proceeding are substantially and directly adverse and that reimbursement would be unfair to the parent; or (c) the parent is found to be indigent. Given the language of the statute, the authority for s. PD 6.05 (4) is unclear. More importantly, 1993 Wisconsin Act 446 removed guardians from the coverage of s. 48.275, Stats. See SECS. 32m to 37 of Act 446.

2. Form, Style and Placement in Administrative Code

a. In ss. PD 6.01 and 6.02, the use of “Per” is not accepted drafting style. There appears to be no reason to cross-reference the statutory provisions.

b. It is suggested that s. PD 6.02 (2) be redrafted as follows: “If a client pays the optional prepayment amount under sub. (1), the client is not liable for any additional payment for public defender legal counsel for that case.”

c. In s. PD 6.03 (1) (intro.), “decide to” should be deleted and “any of” should precede “under.” In pars. (a) and (b), “The” should replace the first “the.” A period should replace “; or,”.

d. In s. PD 6.03 (2), “a” should be substituted for “any” and “is” should be substituted for “will be automatically.” Also, “reissuance” should replace “reissue.”

e. Section PD 6.03 (3) suggests the possibility of defining the term “reimbursement fee” for the entire chapter so that it applies both to the repayment obligation and the optional prepayment amount, if that definition is consistent with the use of “reimbursement fee” in the other sections of the rule. See, also, the use of “reimbursement fee” in ss. PD 6.04 (intro.) and 6.05.

f. In s. PD 6.04 (intro.), “will” should be replaced by “shall.”

g. The paragraphs of s. PD 6.04 should be subsections. [See s. 1.03 (3), Manual.] Also, the subsections should begin with an article such as “An” or “The.” Finally, all of the subsections should end with a period.

h. Section PD 6.05 (3) should be redrafted as follows: “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 PD 6.05 only refers to the reimbursement fee under s. PD 6.01. Does the parent of a juvenile not have a prepayment option?

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

a. In s. PD 6.03 (3), reference should be to “this section” rather than “this subsection.”

b. In s. PD 6.04 (c) [which should be s. PD 6.04 (3)], reference should be made to the specific administrative rule section rather than “per administrative rule.”

c. In s. PD 6.05 (1) (a), the meaning of “unless the amount of the fee is adjusted pursuant to s. PD 6.05 (3)” is unclear; there is no fee adjustment in sub. (3). Furthermore, if that is the cross-reference intended, reference may be made simply to “sub. (3).”

d. In s. PD 6.05 (1) (b), the cross-reference to s. PD 3.04 (1) means that the reimbursement fee for a partially indigent parent is based on the schedule for the anticipated cost of retaining counsel, as set forth in s. PD 3.02 (1). Is that intended?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Because there is no fee schedule included in s. PD 6.01, it is difficult to determine what the introductory clause is intended to state. It appears that it should be reworded as follows: “Except as provided in ss. PD 6.02 to 6.05, a person who is responsible for payment for legal representation provided by the state public defender shall reimburse the state public defender for the cost of the legal representation according to the following schedule.”. A schedule should then follow the introductory clause.

b. In s. PD 6.03 (1) (intro.), the use of “some” is vague. Can more specificity be provided? Or, if not, can standards be set forth to indicate how the state public defender will decide for which cases the reimbursement fee is waived?

c. In s. PD 6.04 (intro.), it is suggested that “for a single client” be inserted after “counsel.”

d. In s. PD 6.04 (b) [which should be s. PD 6.04 (2)], should “indigent” be replaced by “eligible for state public defender representation”?