



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-067

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In the last bullet point of the plain language analysis, the acronym “SPD” should be spelled out.

b. The rule preface comparison of rules in adjacent states should describe the systems used in each adjacent state.

c. Section PD 1.03 (3), first sentence, would be clearer if drafted as follows (if, in fact, the following comports with the intent of the Public Defender):

(3) (title) (a) The state public defender may suspend the attorney from any or all of the certification lists in s. PD 1.04 under any of the following circumstances:

1. Pending the outcome of an investigation into: the attorney’s performance; an allegation of fraudulent, unreasonable or inaccurate billing practices or other misconduct; or the attorney’s failure to comply with any provision of this chapter.

2. In response to a request for decertification.

(b) The suspension under par. (a) may not exceed...may be appealed under s. PD 1.05.

[The same comment applies to the structure of s. PD 1.03 (2).]

d. In s. PD 1.03 (5), the introduction should conclude with the phrase “any action under this chapter may include consideration of any of the following factors.”

e. Section PD 1.03 (5) (a) should read: “(a) In this or any other jurisdiction, the attorney is or has been disbarred, has or has had his or her license to practice law suspended, or has surrendered his or her license to practice law.” In pars. (g) and (h), substitute “has been” for “was.”

f. In s. PD 1.035, the word “must” should be replaced by the word “shall.” Also, in sub. (4) (b), the phrase “this requirement” should be replaced by the cross-reference “(a)” and the term “Board of Bar Examiners” should not be capitalized. Finally, in sub. (4) (c), the second and third sentences should be combined to read: “As used in s. 977.05 (5) (e), Stats., relating to sponsoring conferences and training, ‘sponsor’ means...and ‘tuition’ means...and materials.”

g. In s. PD 1.037 (2), the introductory material should be renumbered as par. (a), and pars. (a) to (c) should be renumbered pars. (b) to (d).

h. In s. PD 1.04 (1) to (15), including any further divisions such as paragraphs, it must be remembered that titles are not part of the text of the rule. Thus, all of the titles to these provisions must be incorporated into the text of the provisions. For example, for sub. (1): “(1) For misdemeanors, no additional criteria.” The titles may be kept, although shortened where possible, but the words in those titles must be incorporated into the text of each provision.

i. In s. PD 1.05, the appropriate drafting approach is to repeal s. PD 1.05 (1) in one SECTION and then amend the rest of the provisions in s. PD 1.05 that are, in fact, being amended in the next SECTION. Note that subs. (4), (5), (7), and (8) are not amended by the rule and should not be included in this second SECTION; only subs. (2), (3), and (6) are amended.

j. Section PD 1.04 (14) states that the State Public Defender may develop other specialized certification lists that may be based upon additional certification criteria to be developed by the State Public Defender. These additional criteria should be placed in the Administrative Code.

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

a. Section PD 1.03 (1) refers to an application form prepared by the State Public Defender. The requirements of s. 227.14 (3), Stats., should be met.

b. In s. PD 1.04 (7), the second occurrence of the notation “ch.” should be deleted. It is not necessary to use this notation in a disjunctive cross-reference. The entire rule should be reviewed for this concern.

c. In s. PD 1.08 (2), the phrase “these rules” should be replaced by the phrase “this chapter.”

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

a. In s. PD 1.03 (2), first sentence, semicolons should be used instead of commas in the list of items after the colon.

b. In s. PD 1.037 (2) (b), semicolons should be used between all of the items listed as follows: "...client files; billing records; client communications; court records; telephone or personal conferences; and recommendations of judges and attorneys." In par. (c), "Supreme Court Rules of Professional Conduct for Attorneys" should not be capitalized. [See also s. PD 1.03 (5) (e) and (g).]

c. Section PD 1.037 (4) describes which decisions of the State Public Defender may be appealed. Presumably, this provision describes the process of internal appeal to the State Public Defender Board and does not intend to limit any judicial appeal rights provided under ch. 227, Stats. If so, the subsection should be clarified.

d. In s. PD 1.04 (3) (d) 2., it appears that the phrase "Class D or more serious felony cases" should be replaced by the phrase "Class A to D felony cases." The entire rule should be reviewed to substitute the word "to" for the use of a hyphen in describing a range of felony classifications.

e. In s. PD 1.04 (7) (b), what is the meaning of the phrase "initial period of his or her provisional certification"?

f. In s. PD 1.04 (9) and (13) (a) 2., (b) 4., and (c) 2., the semicolons should be replaced by commas.