



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-133

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.]

1. Statutory Authority

Unless there is specific statutory authority, once promulgated as rules, the standards for determination of indigency cannot be revised except by amendment of the rules. Is there statutory authority for the State Public Defender to “revise these standards as required” without engaging in rule-making, as stated in s. PD 3.03 (9)? [See, also, s. PD 3.02 (3).]

2. Form, Style and Placement in Administrative Code

a. In the rule preface statement of statutory authority, the hyphen should be replaced by the word “to.”

b. In the rule preface explanation of agency authority, the reference to “s. 49.145” in the third paragraph should be followed by the notation “, Stats.”

c. The rule preface description of where comments may be submitted also should include a deadline for the submission of the comments. [The same comment applies to Clearinghouse Rule 10-134.]

d. See the Administrative Rules Procedures Manual for instructions in rule drafting. A copy may be found at the Legislative Council Internet site (<http://legis.wisconsin.gov/lc/>) under the tab titled “Administrative Rules.”

e. Rules must be divided into SECTIONS, each SECTION providing a particular treatment of a specific unit of the Administrative Code and including a treatment clause. For example, the treatment of s. PD 3.01 should be accomplished as follows:

SECTION 1. PD 3.01 is repealed and recreated to read:

PD 3.01 **General rule.** Except as provided in s. 977.07 (1), Stats.,...

f. The rule refers to all units of the statutes and Administrative Code as “sec.” See ss. 1.03 and 1.07 (2), Manual, regarding the correct designation and form of citation of these units.

g. In s. PD 3.01, the word “must” should be replaced by the word “shall.”

h. In current s. PD 3.015, there is a colon following the word “information” that is not shown in the revised provision. The rule should include, and strike through, this colon.

i. In s. PD 3.02 (1), the words “Category,” “Petition,” “Felony,” and “Proceeding” all should be shown in lowercase.

j. In s. PD 3.03 (1) (a) and (b), the terms “asset limitations” and “income limitations” should be drafted as paragraph titles, written in italics, and followed by a period, rather than a colon. The first word of the following text should be capitalized. See the model provided by s. 49.145 (3), Stats. Also, the notation for par. (b) should be shown within parentheses.

k. The list of income sources in s. PD 3.03 (5) (a) should be broken out as subdivisions of that paragraph. The same comment applies to s. PD 3.03 (5) (b).

l. In s. PD 3.03 (7) and (8), the correct cross-references are “s. 48.275 (2) (b) or 938.275 (2) (b), Stats.,” and “s. 51.605 (1) or 55.107 (1), Stats.,” respectively.

m. The treatment of s. PD 3.05 (1) is confusing. It first strikes the text of the existing sub. (1) in its entirety, suggesting that this subsection should be repealed and recreated. It then amends text that is not a part of that subsection. Where does this latter text come from?

n. The treatment of ss. PD 3.055 and 3.06 is somewhat awkward. There is no reason to change the section number of s. PD 3.055. The rule should renumber s. PD 3.055 as s. PD 3.055 (1) and amend that subsection in one rule SECTION and create s. PD 3.055 (2) in a separate rule SECTION; in a third SECTION, the rule should repeal and recreate s. PD 3.06. What this rule numbers s. PD 3.08 should be numbered s. PD 3.07.

o. In s. PD 3.06 (2), the acronym “SPD” should be written out as “State Public Defender.”

p. In s. PD 3.07 (5), the hyphen should be replaced by the word “to.”

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

a. The analysis should identify the statutes that grant rule-making authority (i.e., that state that the agency may or shall promulgate a rule) separately from those that the rule interprets; statutes that provide authority for the *policy* contained in the rule are included in the

latter category. In this case, the analysis should list ss. 227.11 (2) and 977.02 (3) and (5) as authorizing rule-making and ss. 977.02 (3) and (5), 977.06 (1) (a) and (2) (a), 977.07 (1), and 977.08 (1) as the statutes that the rule interprets.

b. Section PD 3.08 (2) references s. PD 6.045, which does not exist. The rule-making order should refer to Clearinghouse Rule 10-134.

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

a. A comma should be inserted following “information” in s. PD 3.04 (intro.).

b. In s. PD 3.06 (1), does the word “within” include 90 days before and after applying for representation? If the rule is meant to apply only to a period of 90 days after applying for representation, the text of the rule should so state.