

## **Report From Agency**

### **PUBLIC DEFENDER BOARD REPORT TO LEGISLATURE**

**PD 1 and 4, Wis. Adm. Code**

**Clearinghouse Rule 24-042**

#### **I. PROPOSED RULE AND SUMMARY:**

The proposed rule, including analysis and text, are attached.

#### **II. REFERENCE TO APPLICABLE FORMS:**

There are no references to new forms.

#### **III. FISCAL ESTIMATE AND ECONOMIC IMPACT STATEMENT:**

The fiscal estimate and economic impact analysis are attached. The proposed rule will have no material impact upon the State's fiscal obligations. The proposed rule will have limited or no material impact on the economy of the state.

#### **IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The state public defender is responsible for providing legal services to indigent individuals in criminal, juvenile, mental health, termination of parental rights, and other enumerated proceedings under s. 977.05, Wis. Stats. Under s. 977.08, the state public defender may delegate the legal representation of any person to any member of the State Bar of Wisconsin who is certified by the state public defender to take cases. The state public defender certifies attorneys to represent clients under ch. PD 1.

The state public defender may take a number of actions regarding an attorney's certification status. For cause, the state public defender may deny an attorney's application for certification or recertification; return an attorney to provisional certification; exclude an attorney from any certification list under s. PD 1.04; suspend an attorney's certification status; caution an attorney; impose conditions upon an attorney's continued certification; or take any other action that is consistent with the best interests of clients, the interests of justice, or the interests of the state public defender.

An attorney may appeal the state public defender's certification decision to the state public defender Board under s. PD 1.05. After the Board hears the matter, the board issues a written decision constituting finding of fact and conclusions of law. The board may affirm, reverse, or modify the state public defender's certification decision. The proposed rule would explicitly designate the parties to any appeal, create tailored and standardized procedures for appeal hearings, clarify the rules of evidence apply at any appeal hearing, and require each decision to include notice of the right to petition for further review.

The objective of the proposed rule is to clarify procedures, and increase accessibility for private bar members seeking to conduct business with the State Public Defender. Creating clear process requirements for certification appeals represents a codification of current practices and policies.

An attorney may appeal the state public defenders' denial or reduction of a bill under ss. PD 4.02, 4.03. When the state public defender receives a bill submission from a private attorney, the agency reviews it to "insure that attorney time billed reflects reasonable attorney practice." The proposed PD 4.02(2) would delineate considerations the agency will utilize when determining whether the billed time is reasonable. If the attorney submitting the bill wishes to appeal any decision they are to follow the procedures outlined in PD 4.03. Proposed Rule s. PD 4.03 creates tailored and standardized procedures for bill appeal hearings and clarifies the rules of evidence, as governed by s. 22.47, Stats., applies. Finally, Proposed rule s. PD 4.03 requires each decision provide notice of the right for rehearing and administrative or judicial review of adverse decisions.

**V. SUMMARY OF PUBLIC COMMENTS, APPEARANCES AT THE PUBLIC HEARING, AND MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The notice for public hearing was posted in the May 13, 2024 issue of the Wisconsin Administrative Register. A public hearing, which had both an in-person and virtual option, was held on June 24, 2024. No members of the public attended the hearing, no persons appeared or registered for or against the proposed rule, and no written comments were received during the comment period that concluded on the close of business on June 24, 2024. No modifications were made following the hearing, as no public comments or testimony were received.

**VI. CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE:**

No changes to the Fiscal Estimate were made, as no public comments or testimony were received. No changes to the Rule Analysis were made, as no comments or testimony were received by the public nor the Legislative Council Rule Clearinghouse.

**VII. RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT:**

The Legislative Council Rules Clearinghouse submitted their report on May 29, 2024 and there were comments for the rule. Recommendations were accepted in whole. Further clarification and edits were made with the assistance of Legislative Council staff. These recommendations were accepted in whole. The record of this correspondence is attached.

**VIII. RESPONSES TO REPORT FROM THE SBRRB AND FINAL REGULATORY ANALYSIS:**

The Small Business Regulatory Review Board did not prepare a report on this rule proposal. No regulatory flexibility analysis was required because the rule will not have an effect on small business.

**IX. RESPONSE TO ENERGY IMPACT REPORT:**

No energy impact report was prepared or required for the proposed rule.

**X. HOUSING IMPACT ANALYSIS:**

No housing impact analysis was prepared or required for the proposed rule.