

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date 5/9/2024</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) PD 1.05 Appeal of certification decisions PD 4.02 Submission of bill PD 4.03 Appeal</p>	
<p>4. Subject Appeals to the Board for certification and billing decisions of the State Public Defender for Private Bar Attorneys and what considerations the State Public Defender must consider before adjusting a bill</p>	
<p>5. Fund Sources Affected <input checked="" type="checkbox"/> GPR   <input type="checkbox"/> FED   <input type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.550(1)(a)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input type="checkbox"/> Increase Costs   <input checked="" type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The proposed amendments would clarify the procedures for Appeals to the State Public Defender Board regarding agency decisions relating to Private Bar Attorney certifications and Private Bar Attorney billing adjustments. Namely, it would codify existing practices and procedures into Code allowing for increased clarity for appealing attorneys and the Agency.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The State Public Defender held a preliminary public hearing and comment period that culminated in a public meeting on the scope statement for the proposed rule. As provided in the hearing notice, any comment received during the preliminary public hearing and comment period are also considered for the development of this economic impact analysis. However, no comments were received to be considered in the development of this economic impact analysis</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) Minimal impact on Private Bar Attorneys accepting State Public Defender assigned cases. No compliance costs expected and anticipate increased accessibility in doing business with the State Public Defender.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule There are no clear policy alternatives as these rule changes are not meant to change policy but rather codify current practice. The current rules indicate the process for an appeal and that an appeal is governed by chapter 227. The goal of the changes to PD 1.05 and 4.03 is to be sure the process is the same for both types of appeals. Such clarity and</p>	

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uniformity will decrease the hours required by the Agency and Private Bar Attorneys in analyzing and considering certification decisions and billing adjustments.

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16. Long Range Implications of Implementing the Rule  
None.

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17. Compare With Approaches Being Used by Federal Government  
Appointment of private counsel to indigent defendants in the Federal system is governed by the Criminal Justice Act, codified at 18 U.S.C. § 3006A. These appointments are administered by District Judge in a geographical district. Nationwide court policy, Guide to Judiciary Policy, Vol 7 Defender Services, Part A Guidelines for Administering the CJA and Related Statutes, Chapter 2: Appointment and Payment of Counsel, sets the rates and review guidelines for submitted attorney bills. This system limits bill reductions only to: (1) mathematical errors, (2) billed work is not compensable; (3) billed work was not undertaken or completed; or (4) hours billed are clearly in excess of what is reasonably required to complete the task. Challenges to bill reductions and certification decisions follow a similar system to what is implemented in Wisconsin, including clear notice requirements and the opportunity for independent review.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)  
Illinois: Illinois does not have a Statewide Public Defender System and indigent defense funding is appropriated at the County level, which leaves a patch work of systems as it relates to assignment of private attorneys to indigent defense. 55 ILCS 5/3-4011. This makes comparison of the Illinois approach uninformative due to the incongruity of the systems.

Iowa: Chapter 815 of the Iowa Code addresses "Costs - Compensation and fees - Indigent Defense" governs payment for privately retained attorneys representing indigent persons. Iowa Code § 815.1 details requirements for payment, which is acted upon by the Court in a given case. Implicit in the Iowa code is the fact that each representation shall be evaluated and there may be variation not only in hours but in rate billed. This is not comparable to the Wisconsin system as there is a standard rate available for Public Defender cases. Aside requirements in Iowa Code § 815.1 relating to submission of "the attorney's fee agreement for the representation, including hourly rate [,]" which are inapplicable to Wisconsin. Conversely, Iowa code, like Wisconsin, provides for the requirement the bill must be "reasonable." Unlike Wisconsin, in Iowa the fee agreement as a whole - including hourly rate - must be examined for reasonableness. Proposed Rule PD 4.02 includes factors for consideration in determining reasonableness is tailored to "whether attorney time billed reflects reasonable attorney practice."

Michigan : A Statewide Michigan Indigent Defense Commission was created in 2013 in an effort to address the problem of having disparate practices across the State. This Commission implements minimum standards for indigent defense services. These serves are, however, implemented and provided by local government entities with some limited oversight from the judiciary. A review of Wayne County, which includes Detroit, illustrates there are analogous Attorney training and certification standards and criteria in deterring reasonableness for an invoice. This includes a "Payment Inquiry" which is submitted when there is a perceived missing or underpayment. This process requires similar data that would address the criteria in amended ss. PD 4.02, 4.03.

Minnesota: Private Bar attorneys in Minnesota are compensated "in a manner prescribed by the chief district public defender" Minn. Stat. s. 611.27(12). This statute further requires the chief judge of each judicial district to establish, after consultation with criminal justice stakeholders, a reimbursement rate for attorneys' fees and costs associated with the representation of any qualified defendant. Minn. Stat. s. 611.27(16). This creates varying rates throughout the state, with higher rates being paid in geographical markets with increased demand. This is not comparable to the Wisconsin system. Minnesota statute limits fees to those which are "reasonable" and requires approval if an attorney bill exceeds \$5,000 exclusive of reimbursable expenses. Review of attorney bills are similar to the procedure of proposed rules ss. PD 4.02, 4.03, with the main difference being Minnesota reviews these decisions on a local level while Wisconsin Statute requires review at the State level.

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**ADMINISTRATIVE RULES**  
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19. Contact Name

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20. Contact Phone Number

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This is codification of current practices and procedures

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Historical Data of private bar and bill challenges.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

Clarification and standardization of processes to allow for more frictionless business with State Public Defender

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Clear notice requirements and delineation of standards makes ascertainment of requirements more accessible. This will encourage additional attorneys to decide to conduct business with the State Public Defender as the additional clarity will make business with the agency more approachable

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5. Describe the Rule's Enforcement Provisions

The rule provides for clear notice requirements regarding the availability of rehearing or judicial review. Further, decisions adverse to the agencies position and made during the appeal process are considered binding by the agency.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
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