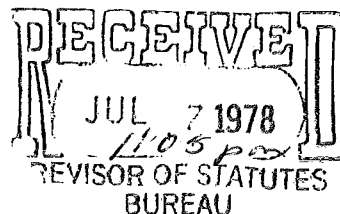


SPD 1 to 4

CERTIFICATE



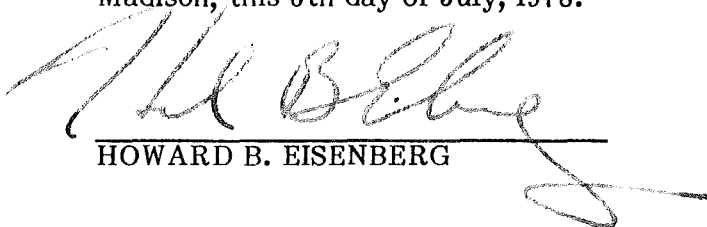
STATE OF WISCONSIN)
) SS
STATE PUBLIC DEFENDER BOARD)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard B. Eisenberg, State Public Defender, and custodian of the official records of said Board do hereby certify that the annexed rules relating to Chapter SPD 1, Certification, were duly approved and adopted by this Board on June 22, 1978.

I further certify that said copy has been compared by me with the original on file with this Board, and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 340 West Washington Avenue, in the City of Madison, this 6th day of July, 1978.



HOWARD B. EISENBERG

ORDER OF THE STATE PUBLIC DEFENDER BOARD

Pursuant to authority vested in the State Public Defender Board by Chapter 977, Wis. Stats., the State Public Defender Board hereby adopts rules as follows:

Chapter SPD 1—Certification

Chapter SPD 2—Assignment Procedure

Chapter SPD 3—Indigency Criteria

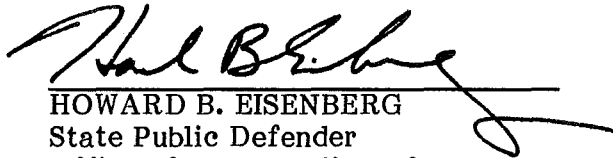
Chapter SPD 4—Private Attorney Payment

A copy of the above rules is attached.

The rules contained herein shall take effect pursuant to authority granted by Chapter 227, Wis. Stats.

Dated: _____

July 13, 1978



HOWARD B. EISENBERG
State Public Defender
Office of State Public Defender

Chapter SPD 1

CERTIFICATION

SPD 1.01 Annual review. (1) Each December the state public defender shall contact every active member of the state bar of Wisconsin and inform each attorney of the procedure for applying for certification under the provisions of s. 977.08. Such attorneys may be required to respond within 30 days. Publication of a notice in a publication of the state bar of Wisconsin may constitute such notice.

(2) Each December the state public defender shall contact every attorney certified under s. 977.08, and ascertain which attorneys have died, left the state, no longer engage in active practice, or no longer desire to remain on the certified lists. Such attorneys shall be removed from the certified lists.

(3) Each December every attorney certified under s. 977.08 shall submit to the state public defender the hours of approved continuing legal education completed and the titles of all such programs as required by SPD 1.04(4) of these rules.

SPD 1.02 Certification of newly admitted attorneys. The state public defender shall provide the Wisconsin supreme court and the state bar of Wisconsin with materials to insure that every person admitted to the state bar after January 1, 1978, is provided with information for applying for certification under s. 977.08. Every person admitted to the state bar of Wisconsin may submit such certification application within 30 days of admission to the bar.

SPD 1.03 Certification application. The state public defender shall prepare an application to be completed by attorneys seeking certification as provided in s. 977.08(3).

SPD 1.04 Certification criteria. (1) An attorney shall be certified in the following categories if he or she meets the following criteria:

(a) Misdemeanor, chapters 48, 51, and 55 representation, conditions of confinement, appeal, and probation and parole revocation cases.

- (i) The attorney has requested certification;
- (ii) The attorney has graduated from law school and is admitted to the state bar of Wisconsin; and
- (iii) The attorney has completed the continuing legal education requirements as provided in sub. (4).

(b) Felony cases.

- (i) The attorney has requested certification;
- (ii) The attorney has graduated from law school and is admitted to the state bar of Wisconsin;
- (iii) The attorney has completed the continuing legal education requirements as provided in sub. (4); and
- (iv) Either
 1. Has served one year as a prosecutor;
 2. Has served one year as a public defender;
 3. Has represented five defendants in misdemeanor cases; or
 4. Has represented two defendants in felony cases.

(2) Attorneys employed by the state public defender shall meet the same criteria as certified private attorneys.

(3) Exclusions. (a) No attorney may be excluded from certification based upon the comments of the district attorney, judge, or county bar president; however, an attorney may be excluded by the state public defender on the following grounds:

- (i) The attorney is disbarred, suspended, or has surrendered his license to practice law in this state;
- (ii) The attorney fails to meet the continuing legal education requirements set forth in sub. (4); or
- (iii) The attorney fails to meet the experience criteria set forth herein.

(b) The state public defender may exclude from a certified list any attorney barred by statute from engaging in criminal representation.

(c) Any attorney who is excluded from the certification list by virtue of the exclusions set forth herein above shall be placed on the appropriate certification list within 30 days after a submission of a written notification to the state public defender that the attorney is no longer excluded, provided further that such attorney had previously submitted a timely and properly prepared certification application.

(4) Continuing legal education. Commencing January 1, 1979, any attorney certified under these rules shall complete seven hours of continuing legal education each calendar year in courses approved by the executive board of the criminal law section of the state bar of Wisconsin.

SPD 1.05 Appeal of certification decisions. (1) The state public defender shall send each attorney who has submitted a certification application the final certified list for each county in which the attorney has applied.

Upon request by that attorney, the state public defender shall inform the attorney excluded from a participating list of the reasons for the exclusion from a particular list and the manner by which he may appeal the decision or reapply for recertification.

(2) Any attorney may appeal the state public defender's certification decision by mailing a letter of appeal to the state public defender within 30 days of the notice of exclusion. The aggrieved attorney shall state in such letter the certification from which he or she has been excluded. Such letter may also state the reasons the attorney believes such exclusion was improper.

(3) Upon receipt of such appeal letter, the state public defender shall place the matter on the agenda of the next state public defender board meeting unless such meeting is less than 10 days from the receipt of the appeal letter, in which case the matter may be scheduled for the following meeting. The state public defender shall, at least 10 days prior to hearing, inform the aggrieved attorney of the time and place of the board meeting at which the appeal will be considered.

(4) The state public defender shall transmit to the board and the aggrieved attorney all material relied upon in reaching the certification decision, including the certification application and all written comments received under s. 977.08(3).

(5) The aggrieved attorney may request that the state public defender reproduce and submit to the board such reasonable material as the attorney deems relevant to the appeal. The hearing before the board shall be considered a "class 3" proceeding and is governed by ss. 227.07 to 227.09.

(6) The state public defender board may deliberate the matter in executive session pursuant to the provisions of s. 19.85(1)(a). The board shall issue a written decision either affirming, reversing, or in some way modifying the certification decision of the state public defender. Such written decision shall be mailed to the

aggrieved attorney within five days of the board meeting and shall be signed by an officer of the board.

(7) The board's written decision shall constitute findings of fact and conclusions of law within the meaning of s. 227.10.

SPD 1.07 Voluntary removal. Any attorney may request to be removed from any certified list for a specified period of time, and the state public defender shall remove such attorney for the period specified and shall then return the attorney to the list without further application.

SPD 1.08 Access to files. (1) The state public defender shall not disclose to any person except the subject, any comments made by any judge, district attorney, or county bar president in accordance with s. 977.08(3), unless ordered to do so by the public defender board or a court.

(2) Only certified lists, board proceedings and decisions under these rules shall be considered public documents and open to public inspection.

Chapter SPD 2

ASSIGNMENT PROCEDURE

SPD 2.01 Definitions. (1) "Emergency assignment" means any situation in which counsel is required on a legal holiday, Saturday, or Sunday, between 5:00 p.m. and 7:30 a.m., or on less than one hour's notice.

(2) "Regular assignment" means any situation in which counsel is required other than under (1).

(3) "Blind draw" shall mean a procedure such that the person assigning the case does not know in advance whether the case will be assigned to a staff attorney or to a private attorney. It shall consist of a tab system for each county proportionately reflecting the percentage ratio assigned to that county by the board under s. 977.02(6). No system for each county shall contain more tabs than the immediate preceding year's indigent caseload.

(4) "Board" means the state public defender board.

SPD 2.02 Emergency assignment procedure. (1) In any emergency situation the representative of the state public defender shall assign the attorney who is located the nearest to where counsel is required and who is available to provide representation, whether such attorney is a staff public defender or private attorney.

(2) Unless the interests of justice require otherwise, the person shall be provided regular counsel under SPD 2.03 and the attorney who provides emergency representation need not continue on the case and need not be permanently assigned.

(3) If it subsequently appears that the person afforded emergency representation is not entitled to publicly compensated counsel, that person shall be required to compensate the state public defender for such services at the hourly rate established by the board for that county.

SPD 2.03 Regular assignment procedure. (1) As soon as it is brought to the attention of a representative of the office of the state public defender that a person who claims or appears to be indigent is entitled to and/or has requested counsel, a person designated by the state public defender shall contact that person for the sole purpose of assisting that person in completing the indigency questionnaire, and a staff or designated attorney will determine whether that person is entitled to publicly compensated counsel under the criteria established by Chapter SPD 3.

(2) If the person is eligible for publicly compensated counsel, a representative of the state public defender shall determine by blind draw as to whether the case is to be assigned to a staff attorney or local private counsel.

(3) If the case is to be assigned to a staff attorney, a representative of the state public defender shall notify the supervising attorney in the appropriate office of the state public defender who shall designate a certain attorney to represent that person.

(4) If the case is to be assigned to local private counsel, a representative of the state public defender shall immediately contact the attorney whose name appears on the top of the appropriate certification list and assign that attorney to represent that person. If that attorney cannot accept the assignment, the next attorney on the list shall be contacted and the first attorney's name shall be placed on the bottom of the list as required by s. 977.08(3)(c). If the attorney accepts the assignment, that attorney's name shall be placed on the bottom of the list.

SPD 2.04 Person's right to refuse specific attorney. (1) A person may request that the attorney assigned to represent him or her be discharged and that another attorney be assigned, and the state public defender shall honor such request, provided:

(a) It is the only such request made by the person in that case; and,

(b) Such change in counsel will not delay the disposition of the case or otherwise be contrary to the interests of justice.

(2) In the event the court or public defender authorizes an attorney to withdraw as counsel, the state public defender shall assign the attorney who next appears on the top of the appropriate certification list and place the original attorney's name on the top of that list. In the event the attorney discharged is a staff public defender, another staff public defender shall be assigned the case.

SPD 2.05 Conflict cases. The state public defender shall not represent more than one person at trial charged in the same case or any client whose interests conflict with any other client. Such cases shall be assigned to private local counsel and compensated as part of the private bar percentage as determined by s. 977.02(6).

SPD 2.06 Counties in which private counsel may be certified. Attorneys may be certified only in those counties in which they reside or maintain their principal office, provided, however, in counties in which there are less than five attorneys on any certification list, those attorneys residing or maintaining their principal office in one or more adjacent counties may also be certified for that county. In cases of conflict, attorneys certified in adjoining counties may be appointed.

SPD 2.07 Public representation after case commenced by retained counsel. (1) If it is necessary for a person to obtain publicly compensated counsel after having retained counsel because of the lack of sufficient funds, the attorney who was originally retained may be assigned and publicly compensated if:

(a) The court finds that the interests or administration of justice will be severely damaged by a change in counsel; or

(b) The retained attorney is certified to provide such representation; and,

1. It appears that the attorney had a reasonable expectation of receiving his or her entire fee when he or she was retained;

2. Such necessity for publicly compensating this retained counsel has occurred no more than once in the preceding 12 months; and,

3. The client and attorney consent.

(2) Such case shall be computed as part of the private bar percentage established under s. 977.02(6).

(3) Under no circumstances shall the state public defender compensate counsel for services rendered prior to the effective date of assignment by the state public defender.

(4) In the event a representative of the state public defender is appointed as counsel, such case shall be computed as part of the state public defender percentage established under s. 977.02(6).

SPD 2.08 Court's right to review indigency determination. (1) Any person determined by the state public defender not to be eligible for publicly compensated counsel may request that the court having jurisdiction over the case review the state public defender's indigency determination.

(2) After affording the defendant and a staff attorney of the state public defender the opportunity to be heard, such court may order the state public defender to provide representation, and the state public defender shall assign counsel.

(3) Such court-ordered representation shall not preclude a finding of partial indigency and the requirement that the person make partial payment to the state public defender.

SPD 2.09 Special types of representation. In the following types of cases private local counsel may be assigned from the indicated certification lists:

(1) Probation, parole, or juvenile aftercare revocation cases — from the certified list relating to the original offense.

(2) Extradition cases — from felony certification list.

(3) Habeas corpus cases (prior to conviction) — from certified list relating to the original offense.

(4) Habeas corpus cases (after conviction) — from appellate certification list.

(5) Post-Conviction motion cases — from appellate certification list.

(6) Civil or criminal contempt cases — from misdemeanor or felony certification list.

(7) Extraordinary remedy cases — from felony or appellate certification list, depending on nature of case.

(8) Mental reexamination cases — from civil commitment certification list.

SPD 2.10 Written notice of assignment. (1) As soon as a regular assignment of counsel is made, the representative of the state public defender shall provide the clerk of court having jurisdiction over that case, in writing, the name, address, and telephone number of the attorney providing representation.

(2) In cases assigned to local private counsel, the representative of the state public defender shall send that attorney written confirmation of the assignment showing:

- (a) The effective date of the assignment;
- (b) The type of case, including the court and case number (if known);
- (c) The client's full name, address, and present location;
- (d) Information regarding compensation as provided in Chapter SPD 4 of these rules.

SPD 2.11 Appellate representation. (1) Appellate representation shall be considered a separate case and reassigned under SPD 2.03 of these rules.

(2) The state public defender shall assign to independent private counsel any case in which a staff attorney of the state public defender's office provided trial representation and it is arguable that the client was not afforded effective representation.

SPD 2.12 Investigative and expert services for private attorneys. (1) The state public defender shall make available to private attorneys assigned under these provisions the services of staff investigators. In the event a staff investigator is not available or is providing services in a conflicting case, the state public defender

shall authorize the private attorney to retain such investigatory services as may reasonably be required, and such investigator shall be compensated by the state public defender.

(2) If a private attorney assigned under these provisions finds it necessary to retain expert assistance who will not be compensated by a court, the attorney shall apply to the state public defender for permission to retain such expert assistance. The state public defender shall approve such request unless the state public defender and the chairperson of the board or a board member designated by the chairperson find that such request or the anticipated fee is unreasonable. The state public defendant shall compensate the assistance approved under this provision.

Chapter SPD 4

PRIVATE ATTORNEY PAYMENT

SPD 4.01 Billing form. At the time a private attorney is assigned a case by the state public defender pursuant to SPD 2.03, the state public defender shall furnish the attorney with a billing form to be submitted when the case is concluded. The form shall include an itemized listing of the service provided and the expenses incurred.

SPD 4.02 Submission of bill. At the conclusion of the case, the private attorney shall submit the billing form to the Madison office of the state public defender for payment of legal services and expenses according to the hourly rate established by the board. The state public defender shall promptly review the bill as required by s. 977.08(4) and promptly authorize payment.

SPD 4.03 Appeal. (1) Any attorney may appeal the state public defender's reduction of any submitted bill by mailing a letter of appeal to the state public defender within 30 days of receipt of the reduced payment. During the pendency of the appeal the attorney may negotiate the check for the reduced payment without waiver of the right to appeal.

(2) Upon receipt of such appeal letter, the state public defender shall place the matter on the agenda of the next state public defender board meeting unless such meeting is less than 10 days from the receipt of the appeal letter, in which case the matter may be scheduled for the following meeting. The state public

defender shall, at least 10 days prior to hearing, inform the aggrieved attorney of the time and place of the board meeting at which the appeal will be considered.

(3) The aggrieved attorney may request that the state public defender reproduce and submit to the board such reasonable material as the attorney deems relevant to the appeal. The hearing before the board shall be considered a "class 3" proceeding and is governed by ss. 227.07 to 227.09.

(4) The state public defender board may deliberate the matter in executive session pursuant to the provisions of s. 19.85(1)(a). The board shall issue a written decision either affirming or in some way modifying the decision of the state public defender. Such written decision shall be mailed to the aggrieved attorney within five days of the board meeting and shall be signed by an officer of the board.

(5) The board's written decision shall constitute findings of fact and conclusions of law within the meaning of s. 227.10.

(6) In the event the board increases the amount to be paid to the attorney, the state public defender shall immediately authorize such payment and request that the state treasurer issue such payment as soon as possible.

CERTIFICATE

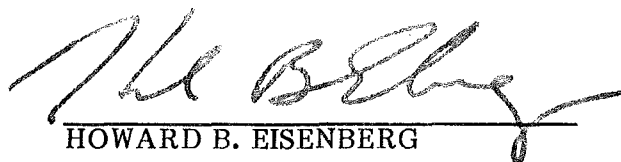
STATE OF WISCONSIN)
) SS
STATE PUBLIC DEFENDER BOARD)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard B. Eisenberg, State Public Defender, and custodian of the official records of said Board do hereby certify that the annexed rules relating to Chapter SPD 4, Private Attorney Payment, were duly approved and adopted by this Board on June 22, 1978.

I further certify that said copy has been compared by me with the original on file with this Board, and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 340 West Washington Avenue, in the City of Madison, this 6th day of July, 1978.



HOWARD B. EISENBERG

Chapter SPD 3

INDIGENCY CRITERIA

SPD 3.01 General rule. A person shall be eligible for the assignment of publicly compensated counsel if the anticipated cost of retaining counsel exceeds the person's available assets.

SPD 3.02 Cost of retained counsel. (1) The "anticipated cost of retaining counsel," which shall constitute attorneys fees only, shall be determined by this schedule:

	In counties in which hourly rate is <u>\$40 or more</u>	In counties in which hourly rate is <u>less than \$40</u>
1st or 2nd degree murder	\$3500	\$3000
Other armed felony	2200	1800
Drug related felony	1600	1200
Other felony	1600	1200
Traffic misdemeanor	400	300
Other misdemeanor	500	400
Juvenile	500	400
Civil commitment	565	450
Appeal to court of appeals	2000	1500

(2) Beginning in July, 1979, and every July thereafter, the state public defender shall survey the attorneys certified under s. 977.08, and the board may revise the schedule of the "anticipated cost of retaining counsel."

SPD 3.03 Computation of available assets. (1) A person's "available assets" shall be determined by adding together:

(a) The person's liquid assets as defined in s. 977.07(2);

(b) The amount which could be raised by a loan on the person's non-liquid assets as provided in s. 977.07(2), which, unless otherwise apparent, shall be computed as one-fourth the person's equity in such property; and,

(c) The amount of income or other money the person anticipates receiving during the pendency of the case, and subtracting from that sum the amount required to provide the necessities of life for that person and those dependent on that person, during the pendency of the case.

(2) The "amount required to provide the necessities of life, means 150% of the standards specified in s. 49.19(11)(a), plus other specified, emergency, or essential costs and the cost of posting bond to obtain release.

(3) The state public defender shall annually review the indigency standards specified herein and revise those standards as required.

(4) For the purposes of this section felony and appellate cases are pending for eight months, all other cases for four months.

SPD 3.035 Consideration of need for expert services. (1) If it appears probable at the time the indigency determination is made that it will be necessary to retain expert assistance in a case, the anticipated cost of retaining such assistance shall be added to the "anticipated cost of retaining counsel" under SPD 3.02.

(2) If a person has retained counsel, but subsequently finds that he or she lacks sufficient assets to both retain counsel and the necessary assistance:

(a) That person may apply for public representation after commencement of the case under SPD 2.07; or

(b) That person and the retained counsel may apply to the state public defender for compensation for such assistance, provided, however, that:

1. The person gives a sworn statement under SPD 3.05; and
2. The need and cost of such assistance is approved under SPD 2.12(2).

SPD 3.04 Partial payment. (1) If the person has insufficient assets to retain counsel, the state public defender shall provide counsel under s. 977.08, and may require the person to make payments to the state in partial payment of legal fees, provided however, that such payments shall not exceed the actual value of the legal services provided as determined by the rate set by the state public defender board. Such payment agreement shall be in writing in conformity to s. 977.07(7).

(2) If a person is confined to an institution and is not required to pay for the necessities of life, that person shall be required to remit all assets over \$200 in partial payment of legal fees.

(3) The state public defender may reduce the payments for legal fees under this section if it appears, by sworn statement of the person, that the person's financial status has sufficiently changed to warrant reduction in the payments or that the interests of justice require such reduction.

SPD 3.05 Sworn statement. All persons provided with publicly compensated counsel shall be required to give a sworn statement of their assets, liabilities, and expenses. Such statement shall be a public document.