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STATE OF WISCONSIN)
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STATE PUBLIC DEFENDER)

I, Brent Smith, Chairperson of the State Public Defender Board, and custodian of the official records do hereby certify that the annexed rules relating to revision of the administrative rules of the State Public Defender Board, were duly approved and adopted by this Board on September 14, 1984.

I further certify that this copy has been compared by me with the original on file in this agency 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 131 West Wilson Street, in the City of Madison, this 20th day of October, 1984.



BRENT SMITH, Chairperson
State Public Defender Board

12-1-84

ORDER OF THE STATE PUBLIC DEFENDER BOARD
ADOPTING, AMENDING, AND REPEALING RULES

To repeal SPD 1.01(3), 2.01(3), 2.07(2) and (4), 3.035(2), and 3.04(2); to renumber SPD 1.04(4) and (5), 2.03(3), (6), and (7), and 2.07(3); to renumber and amend SPD 1.04(6) and (7), 2.03(4) and (5), and 3.02(2); to amend SPD 1.02, 1.04(1)(intro.), (1)(c), (2)(c), (2)(d)5, (3)(c), and (3)(d)3, 1.05, 1.06(1) and (2), 1.07, 1.08(1), 2.02(2) and (4), 2.03(2), 2.04(2), 2.05, 2.06, 2.07(1)(b)2, 2.08(3), 2.09(2), (4), (5), (6), (7), and (8), 2.10(2)(c), 2.12, 3.02(1), 3.03(1)(b), (2), and (4), 3.035, 3.04(1), 3.05(1) and (2), 4.02, 4.03(2), (3), (4), and (6); to repeal and recreate SPD 1.01(1) and (2), 2.01(1), and 2.03(1); and to create SPD 1.04(4) and (6), 2.03(3) and (9), 3.02(2), 3.06, and 4.04, relating to revision of the administrative rules of the State Public Defender Board.

Analysis prepared by the Office of the State Public Defender.

The proposed rules comprehensively revise the administrative rules of the State Public Defender Board. Following is an analysis of each section of the proposed rules.

SECTION 1. The existing SPD 1.01(1) and (2) order the State Public Defender to notify active state bar members of the s. 977.08, Stats., certification procedure, and to update the certification lists every December. Attorneys seeking certification may be required to respond within 30 days of the December notice. Under the proposed rule, the State Public Defender must annually notify each active state bar member of the certification procedure and annually update the certification lists, but not necessarily in December. The 30-day time limit for attorney responses is dropped from the new rule.

SECTION 2. Currently, s. SPD 1.01(3) requires attorneys certified under s. 977.08, Stats., to submit to the State Public Defender the hours of approved continuing legal education completed in accordance with s. SPD 1.04(7) (renumbered SPD 1.04(9)). This subsection is repealed because renumbered s. SPD 1.04(9) requires the State Public Defender to establish procedures to monitor compliance with the continuing legal education requirements.

SECTION 3. S. SPD 1.02 requires the State Public Defender to insure that every attorney admitted to practice in Wisconsin is informed of how to apply for certification for private bar appointments under s. 977.08, Stats. The proposed amendment eliminates the 30-day requirement for applying for certification.

SECTION 4. S. SPD 1.04(1) lists the criteria for certification for misdemeanor, chs. 48, 51, and 55, Stats., cases. The proposed rule adds paternity cases, deletes ch. 48, Stats., (Children's Code), cases from this subsection and creates a new subsection (see s. SPD 1.04(4)) for ch. 48, Stats., cases.

The proposed amendments to s. SPD 1.04(1)(c), (2)(c), and (3)(c) change the references from sub. (7) to sub. (9) to correspond to a numbering change in the proposed rules.

The proposed amendments to s. SPD 1.04(2)(d)5 and (3)(d) add juvenile cases to the types of cases which satisfy the experience criterion for certification in felony cases.

SECTION 5. SPD 1.04(4) is renumbered 1.04(5).

SECTION 6. The proposed s. SPD 1.04(4) creates separate attorney certification requirements for ch. 48, Stats., (Children's Code) representation.

SECTION 7. The current s. SPD 1.04(5) is renumbered 1.04(7).

SECTION 8. The amendment to s. SPD 1.04(8)(a)(2), as renumbered, changes a reference from sub. (4) to sub. (9) to correspond to a numbering change in the proposed rules.

SECTION 9. The proposed rule s. SPD 1.04(6) authorizes the State Public Defender to develop additional specialized lists and to employ additional certification criteria necessary for these lists.

SECTION 10. The proposed rule renumbers s. SPD 1.04(7) to SPD 1.04(9). The proposed rule provides that the State Public Defender will approve the courses which satisfy the continuing legal education requirement set out in the rule. Currently, the rule provides that the courses be approved by the criminal law section of the State Bar Association. The continuing legal education requirement first applies in the calendar year following graduation from law school. The amendment requires the State Public Defender to establish procedures to monitor compliance with the continuing legal education requirement.

SECTION 11. S. SPD 1.05 provides for notifying attorneys of the determination of their eligibility for certification and allows attorneys to appeal to the State Public Defender Board the State Public Defender's decision to exclude them from a particular list. The amendment to s. SPD 1.05(1) provides that the State Public Defender must inform each attorney of the counties and categories for which that attorney is certified, rather than sending the final certified lists.

The phrase "aggrieved attorney" is changed to "attorney" in s. SPD 1.05(2), (3), (4), (5), and (6).

Currently, s. SPD 1.05(6) requires the decision of the State Public Defender Board in an appeal to be mailed to the attorney within 5 days of the Board meeting. The proposed rule changes the time limit to 20 days.

SECTION 12. S. SPD 1.06(1) and (2) are amended to eliminate the word "such."

SECTION 13. The amendment to s. SPD 1.07 requires an attorney who has been voluntarily removed from a certification list to notify the State Public Defender when that attorney wishes to be replaced on the list.

SECTION 14. S. SPD 1.08(1) is amended to replace the phrase "shall not" with the phrase "may not," to comply with the Administrative Rules Procedures Manual.

SECTION 15. The proposed rule changes the definition of "emergency assignment" for purposes of attorney assignment. Currently, this term is defined with reference to times of the day and days of the week. The proposed rule defines "emergency assignment" as any assignment outside of normal business hours or when regular assignment will not provide effective and early representation.

SECTION 16. This section repeals s. SPD 2.01(3) striking the definition of the term "blind draw," because this term is deleted from the SPD rules (see s. SPD 2.03(6), as renumbered).

SECTION 17. This section amends s. SPD 2.02(2) and (4). In emergency situations s. SPD 2.02(2) requires the representative of the State Public Defender to assign the attorney who is available to provide representation and who is located closest to where counsel is needed. The proposed rule requires the representative to assign the attorney most readily available to handle the emergency.

The proposed s. SPD 2.02(4) requires persons provided emergency representation, but subsequently determined not entitled to publicly compensated counsel, to reimburse the State Public Defender at the hourly rate in existence at the time of the appointment, not to exceed the actual value of the services. The current rule requires compensation at a rate set by the State Public Defender Board for the county involved.

SECTION 18. The current s. SPD 2.03(1) requires the State Public Defender or county designee, as soon as it is brought to his or her attention, to assist persons entitled to counsel or requesting counsel in the preparation of the indigency questionnaire. The proposed rule requires the State Public Defender or the county designee to contact any person who claims or appears to be indigent or requests counsel and assist that person in completing the indigency questionnaire.

SECTION 19. S. SPD 2.03(2) requires the State Public Defender and the county designee to be available 24 hours per day. The proposed rule eliminates the current requirement that the State Public Defender or the county designee provide county law enforcement agencies, district attorneys, and county jails with the 24-hour telephone number and the address of the State Public Defender or county designee.

SECTION 20. S. SPD 2.03(3) is renumbered s. SPD 2.03(4).

SECTION 21. The proposed s. SPD 2.03(3) provides that the State Public Defender or county designee shall have immediate access to any individual held in custody for purposes of determining indigency.

SECTION 22. S. SPD 2.03(4) and (5) are renumbered s. SPD 2.03(5) and (6) and are amended. The proposed rule clarifies that the State Public Defender, as well as county designees, must inform persons charged with a crime of their right to a free determination of indigency and to be represented without charge if they are indigent.

Currently, s. SPD 2.03(4) requires the county designee to forward names, addresses, and case numbers of all persons contacted regarding their right to legal representation on a weekly basis to the State Public Defender. The proposed rule s. SPD 2.03(5), as renumbered, requires forwarding of the same information to the State Public Defender on a monthly basis.

The proposed s. SPD 2.03(6), as renumbered, requires the State Public Defender to appoint counsel for eligible persons pursuant to s. 977.08, Stats., which requires sequential appointment of attorneys from the appropriate certified list. An attorney may be appointed out of order and then skip a regular appointment if the attorney is currently or has previously represented the defendant. If no certified counsel is available in a county governed by s. 977.08(5)(a), Stats., then appointment must be to certified counsel in another county. The "blind draw" procedure required now under s. SPD 2.03(5) is eliminated from the proposed rule.

SECTION 23. S. SPD 2.03(6) and (7) are renumbered s. SPD 2.03(7) and (8).

SECTION 24. The proposed s. SPD 2.03(9) states that an assignment to local private counsel off a specialized list created under s. SPD 1.04(6) will be treated as the attorney's next appointment from the regular list.

SECTION 25. Currently s. SPD 2.04(2) states that when an attorney is allowed to withdraw as counsel, the attorney whose name next appears on the appropriate certification list is to be appointed instead. If the attorney is a staff public defender, another staff public defender is to be assigned the case. The proposed rule states that if the discharged attorney is a staff public defender, then a private attorney may be appointed instead.

SECTION 26. S. SPD 2.05 is amended to eliminate an obsolete statutory reference.

SECTION 27. Currently, s. SPD 2.06 provides that attorneys may only be certified in counties in which they reside or maintain their offices, except that in counties where there are less than 5 attorneys on a list, attorneys residing or maintaining their offices in adjacent counties may also be certified. The amendment permits certification of attorneys from adjacent counties when a county has less than 10 attorneys on a list.

SECTION 28 S. SPD 2.05 is amended to delete an obsolete statutory reference.

SECTIONS 29, 30, AND 31. S. SPD 2.07(2) and (4) are repealed because they related to s. 977.02(6), Stats., which was repealed. S. SPD 2.07(3) is renumbered s. SPD 2.07(2).

SECTION 32. S. SPD 2.08 permits courts to review the State Public Defender's determination that an individual is not eligible for publicly compensated counsel and to order the State Public Defender to assign counsel. S. SPD 2.08(3) provides that court-ordered representation does not prevent the State Public Defender from finding the individual partially indigent and ordering the individual to make partial payment for representation. The amendment adds a reference to the rule concerning partial indigency payments, s. SPD 3.04.

SECTION 33. Currently s. SPD 2.09 lists several types of special proceedings and the corresponding certification lists from which attorneys may be drawn for these cases. The proposed rule adds certification lists to those indicated in the current rule.

SECTION 34. The amendment to s. SPD 2.10(2) requires the representative of the State Public Defender to provide assigned counsel with the client's telephone number, in addition to the name, address, and present location.

SECTION 35. Currently, s. SPD 2.12(1) requires the State Public Defender to provide the services of staff or private investigators to private attorneys assigned by a representative of the State Public Defender. Under the proposed rule, the State Public Defender may, but is not required to, provide investigative services.

Currently, s. SPD 2.12(2) permits private attorneys assigned by a representative of the State Public Defender to apply to the State Public Defender for permission to retain experts if such experts will not be compensated by the court. The current rule requires the request to be approved unless the State Public Defender and the chair of the State Public Defender Board or his or her designee find the request to be unreasonable. Under the proposed rule, the State Public Defender may, but is not required to, approve the hiring of experts.

SECTION 36. One element of the indigency formula is the anticipated cost of counsel for the case. The amendment adds paternity cases to the table of "anticipated cost of counsel" in s. SPD 3.02(1).

SECTION 37. The proposed rule renumbers s. SPD 3.02(2) to 3.02(3). Currently, s. SPD 3.02(2) provides for the surveying of attorneys certified under s. 977.08, Stats., every July so that the State Public Defender Board may revise the "anticipated cost of retaining counsel" schedule in s. SPD 3.02(1). The proposed rule requires the State Public Defender to periodically review the actual cost of hiring an attorney and to report these findings to the State Public Defender Board. The Board may then revise the schedule in s. SPD 3.02(1).

SECTION 38. The proposed rule permits the State Public Defender to establish the cost of retaining counsel for any proceeding not included in s. SPD 3.02(1).

SECTION 39. The amendment to s. SPD 3.03(1)(b) replaces the word "such" with the word "that."

SECTION 40. S. SPD 3.03(2) is amended to make the definition of "amount required to provide the necessities of life" consistent with the definition in s. 977.07(2), Stats.

SECTION 41. The amendment proposed for s. SPD 3.03(4) clarifies that the assumption that felony and appellate cases are pending for 8 months and all others for 4 months applies to the entire process of determining a person's eligibility for publicly compensated counsel.

SECTION 42. The proposed amendment to s. SPD 3.035 replaces the word "such" with the word "that" to comply with the Administrative Rules Procedures Manual.

SECTION 43. S. SPD 3.035(2) is repealed. This subsection currently authorizes a person who has retained counsel on his or her own and then is unable to hire expert assistance to apply to the State Public Defender for public legal representation or for payment of the expert costs. It is assumed that this situation is covered under ss. SPD 2.07 and 2.12.

SECTION 44. Currently s. SPD 3.04(1) authorizes the State Public Defender to require persons found to be partially indigent to pay part of their legal fees, but not in excess of the value of the legal services as determined by the State Public Defender Board. The proposed rule states that partial payment shall be at the prevailing State Public Defender rate, but the total payments may not exceed the actual value of the services set out in s. SPD 3.02(1).

SECTION 45. S. SPD 3.04(2) is repealed. This rule currently requires persons confined to institutions where the necessities of life are provided for to remit all assets in excess of \$200.00 in partial payment of legal fees.

SECTION 46. S. SPD 3.05(1) requires persons provided with publicly compensated counsel to give a sworn statement of assets, liabilities, and expenses, and provides that this statement shall be a public document. The proposed rule continues the requirement of a sworn statement, but strikes the language making the statement a public document. (See s. SPD 3.06 below.)

S. SPD 3.05(2) requires the State Public Defender and the county designee to retain indigency evaluations and requires the designee to forward copies of the evaluations to the State Public Defender on a biweekly basis. The proposed rule allows for the disposal of the indigency evaluations after five years and requires the designee to forward copies of the evaluations on a monthly basis.

SECTION 47. The proposed amendments to s. SPD 3.05(1) make it clear that statements of assets, liabilities, and expenses will no longer be public documents. The proposed rule s. SPD 3.06 provides that there shall be no access to the statement during the pendency of an action for which the statement is prepared. At the conclusion of the action, upon written request to the local representative of the State Public Defender, the statement will be filed with the clerk of courts. If the client's attorney or the State Public Defender regional supervisor believe that release of the statement will violate the client's legal rights or the ethical obligations of counsel, then they must file a motion for an order prohibiting release of the statement. If the motion is granted, a sealed copy of the statement will be filed. If not, the statement will be filed. However, it must remain sealed during any appeal of this motion. S. SPD 3.06 further provides that prospective clients must be informed at the outset that they will be required to swear to the accuracy of the statement of assets, liabilities, and expenses, and any misrepresentation in this statement could be the basis for prosecution for false swearing.

SECTION 48. Presently s. SPD 4.02 requires private attorneys to submit billing forms to the Madison office of the State Public Defender at the conclusion of the case. The proposed rule requires private attorneys to submit billing forms within six months of the conclusion of the case to the local office of the State Public Defender. The proposed rule also clarifies that the State Public Defender is to promptly review and pay the bill at the rate established by statute.

SECTION 49. S. SPD 4.03 interpreting s. 977.08(4), Stats., allows aggrieved attorneys to appeal to the State Public Defender Board the State Public Defender's decision to reduce a submitted bill. The amendments to s. SPD 4.03(2), (3), and (4), change the phrase "aggrieved attorney" to "attorney."

Currently s. SPD 4.03(3) allows attorneys to request that materials be submitted by the State Public Defender to the State Public Defender Board that the attorney deems relevant to the appeal. The proposed rule requires material relevant to the appeal to be submitted to the board.

Currently s. SPD 4.03(4) states that attorneys shall be notified of the State Public Defender Board's decision in an appeal within 5 days of the Board meeting. The proposed rule changes the time limit to 20 days.

SECTION 50. The proposed rule s. SPD 4.04 prohibits attorneys representing clients for the State Public Defender program from soliciting, attempting to solicit, or receiving compensation from the clients in addition to compensation received from the State Public Defender.

Pursuant to the authority vested in the State Public Defender Board by sections 227.014(2)(a) and 977.02, Stats., the State Public Defender Board hereby proposes to repeal, amend, and adopt rules interpreting ss. 967.06, 977.02, 977.05, 977.07, 977.08, and 977.09, Stats., as follows:

SECTION 1. SPD 1.01(1) and (2) are repealed and recreated to read:

SPD 1.01 ANNUAL REVIEW. (1) The state public defender shall annually notify each active member of the state bar of Wisconsin of the procedures for applying for certification under the provisions of s. 977.08, Stats. Publication of a notice in the publication of the state bar of Wisconsin constitutes notice.

(2) The state public defender shall annually update its certification list under s. 977.08, Stats., regarding the availability of private attorneys to be appointed to state public defender matters.

SECTION 2. SPD 1.01(3) is repealed.

SECTION 3. SPD 1.02 is amended to read:

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.~~

SECTION 4. SPD 1.04(1)(intro.), (1)(c), (2)(c), (2)(d)5, (3)(c) and (3)(d)3 are amended to read:

SPD 1.04 CERTIFICATION CRITERIA. (1)(intro.) An attorney shall be certified for misdemeanor, chs. 48, 51 and 55, Stats., representation, conditions of confinement, paternity, and probation and parole revocation cases if:

(1)(c) The attorney has completed the continuing legal education requirements as provided in sub. ~~(7)~~ (9).

(2)(c) The attorney has completed the continuing legal education requirements as provided in sub. ~~(7)~~ (9); and

(2)(d)5. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in 2 cases, civil, ~~or~~ criminal, or juvenile, that have been tried to a jury to final resolution.

(3)(c) The attorney has completed the continuing legal education requirements as provided in sub. ~~(7)~~ (9); and

(3)(d)3. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in 5 cases, civil, ~~or~~ criminal, or juvenile, that has been tried to a jury to final resolution.

SECTION 5. SPD 1.04(4) is renumbered 1.04(5).

SECTION 6. SPD 1.04(4) is created to to read:

SPD 1.04(4) An attorney shall be certified for ch. 48, Stats., representation in accordance with sub. (1) for non-delinquency cases. Delinquency cases shall follow the criteria in subs. (1) to (3) according to the most serious of the charges forming the basis of the delinquency petition.

SECTION 7. SPD 1.04(5) is renumbered 1.04(7).

SECTION 8. SPD 1.04(6) is renumbered 1.04(8), and SPD 1.04(8), as renumbered, is amended to read:

SPD 1.04(8) ~~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:

SPD 1.04(8)(a)2. The attorney fails to meet the continuing legal education requirements set forth in sub. ~~(4)~~ (9); or

SECTION 9. SPD 1.04(6) is created to read:

SPD 1.04(6) The state public defender may develop specialized lists within subs. (1) to (5), which may be based on additional certification criteria to be developed by the state public defender. Specialized lists within sub. (3) for cases requiring exceptional expertise may be developed with the approval of the state public defender.

SECTION 10. SPD 1.04(7) is renumbered SPD 1.04(9) and amended to read:

SPD 1.04(9) ~~CONTINUING LEGAL EDUCATION.~~ Any attorney certified under ch. SPD 1 of 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~~ state public defender. This requirement shall apply beginning with the first full calendar year following graduation from law school. The state public defender shall establish procedures to monitor compliance with this requirement.

SECTION 11. SPD 1.05 is amended to read:

SPD 1.05 APPEAL OF CERTIFICATION DECISIONS. (1) The state public defender shall ~~send~~ notify each attorney who has submitted a certification application ~~the final certified list for each county in which the attorney has applied~~ of the counties or county and categories for which the attorney is eligible. Upon request by that attorney, the state public defender shall inform the attorney excluded from a participating particular list of the reasons for the exclusion from a particular list and the manner by which ~~he~~ the attorney 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~~ the letter the certification from which ~~he or she~~ the attorney has been excluded. ~~Such~~ The letter may also state the reasons the attorney believes ~~such~~ the exclusion was improper.

(3) Upon receipt of ~~such~~ an appeal letter, the state public defender shall place the matter on the agenda of the next state public defender board meeting unless ~~such~~ that 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, Stats.

(6) The state public defender board may deliberate the matter in executive session pursuant to the provisions of s. 19.85(1)(a), Stats. The board shall issue a written decision either affirming, reversing, or ~~in some way~~ modifying the certification decision of the state public defender. ~~Such~~ The written decision shall be mailed to the ~~aggrieved~~ attorney within ~~5~~ 20 days of the board meeting and shall be signed by an officer of the board.

SECTION 12. SPD 1.06(1) and (2) are amended to read:

SPD 1.06 REMOVAL FROM CERTIFICATION LISTS FOR CAUSE. (1) Any interested party may request, in writing, that an attorney, previously certified to accept cases from the state public defender, be removed for cause. Upon receipt of ~~such~~ a request, the state public defender shall conduct an investigation thereof. Upon a finding of cause, the state public defender may suspend the attorney from certification or may refer the attorney to the state public defender board with a recommendation for removal.

(2) Upon a recommendation for removal, or following the suspension of ~~such~~ any attorney and the state public defender's recommendation for removal, the board shall review ~~such~~ the investigation and recommendation. Upon request of ~~such~~ the attorney prior to its review of the state public defender's investigation and recommendation, the board shall conduct a hearing at which time the attorney in question may be heard and produce evidence in defense thereof. Upon a finding of cause, the board may remove ~~such~~ the attorney. The board shall render a decision within ~~sixty~~ 60 days of the hearing.

SECTION 13. SPD 1.07 is amended to read:

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~~ the attorney ~~for the period specified and shall then return the attorney to the list without further application~~ until notified in writing by the attorney that the attorney wishes to be placed back on the list.

SECTION 14. SPD 1.08(1) is amended to read:

SPD 1.08 ACCESS TO FILE. (1) The state public defender ~~shall~~ may 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.

SECTION 15. SPD 2.01(1) is repealed and recreated to read:

SPD 2.01 DEFINITIONS. In this chapter: (1) "Emergency assignment" means assignment of counsel outside of normal business hours or when regular assignment will not provide both effective and early representation.

SECTION 16. SPD 2.01(3) is repealed.

SECTION 17. SPD 2.02(2) and (4) are amended to read:

SPD 2.02(2). In any emergency situation, ~~and after the indigency evaluation of a person,~~ 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~~ most readily available to handle the emergency situation, whether such that attorney is a staff public defender or private attorney.

(4) If it subsequently appears that the person ~~afforded~~ provided emergency representation ~~is~~ was not entitled to publicly compensated counsel, that person shall be required to compensate the state public defender for ~~such~~ those services at the hourly rate ~~established by the board for that county~~ in existence at the time of appointment of counsel and, in no case in excess of the maximum cost determined by the state public defender to be the value of those legal services.

SECTION 18. SPD 2.03(1) is repealed and recreated to read:

SPD 2.03 (1) The state public defender or county designee shall contact any person who claims or appears to be indigent or has requested counsel for the purposes of assisting that person in completing the indigency questionnaire.

SECTION 19. SPD 2.03(2) is amended to read:

SPD 2.03(2) The state public defender and county designee shall be available 24 hours per day including weekends and legal holidays. ~~The state public defender and county designee shall provide to county law enforcement agencies, the district attorney, and the county jail the 24-hour telephone number and address of the state public defender or county designee.~~

SECTION 20. SPD 2.03(3) is renumbered 2.03(4).

SECTION 21. SPD 2.03(3) is created to read:

SPD 2.03(3) The state public defender or county designee shall have immediate access in person or by phone to any individual held in custody, including but not limited to city or county jails, detention facilities, or mental health facilities, upon request by the state public defender or county designee, to advise the person of the right to a free determination of indigency and for the purpose of determining indigency.

SECTION 22. SPD 2.03(4) and (5) are renumbered 2.03(5) and (6) and amended to read:

SPD 2.03(5) The state public defender or county designee shall advise all persons charged with a crime, detained for purposes of juvenile or involuntary civil commitment proceedings, or otherwise facing a legal proceeding which is within the scope of representation provided by the state public defender, prior to their initial court appearance, that they have a right to be represented by an attorney in the proceeding without charge if found indigent or for a partial charge if found partially indigent. The state public defender or county designee shall also advise all persons prior to their initial appearance that they have a right to a free determination of their eligibility for ~~such~~ those legal services. The county designee shall forward to the state public defender on a ~~weekly~~ monthly basis the names, addresses, and case numbers of these persons and the dates on which the contacts were made.

(6) 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 appoint counsel pursuant to s. 977.08, Stats. If no certified counsel is available in a county governed by s. 977.08(5)(a), Stats., appointment shall be to certified private counsel in another county.

SECTION 23. SPD 2.03(6) and (7) are renumbered 2.03(7) and (8).

SECTION 24. SPD 2.03(9) is created to read:

SPD 2.03(9) If the case is assigned to local private counsel on a specialized list under s. SPD 1.04(6), the assignment shall serve in lieu of that attorney's next appointment from the regular list.

SECTION 25. SPD 2.04(2) is amended to read:

SPD 2.04(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~~ a private attorney may be appointed.

SECTION 26. SPD 2.05 is amended to read:

SPD 2.05 CONFLICT CASES. The state public defender ~~shall~~ may 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).~~

SECTION 27. SPD 2.06 is amended to read:

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 ~~5~~ 10 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.

SECTION 28. SPD 2.07(1)(b)2 is amended to read:

SPD 2.07(1)(b)2. ~~Such~~ The necessity for publicly compensating this retained counsel has occurred no more than once in the preceding 12 months; and

SECTION 29. SPD 2.07(2) is repealed.

SECTION 30. SPD 2.07(3) is renumbered SPD 2.07(2).

SECTION 31. SPD 2.07(4) is repealed.

SECTION 32. SPD 2.08(3) is amended to read:

SPD 2.08(3) ~~Such court-ordered~~ 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 as provided by SPD 3.04.

SECTION 33. SPD 2.09(2), (4), (5), (6), (7), and (8) are amended to read:

(2) Extradition cases--from felony or misdemeanor certification list.

(4) Habeas corpus cases (after conviction)--from appellate certification ~~list~~ lists or from certification lists relating to the original offense.

(5) Post-conviction motion cases--from appellate certification ~~list~~ lists or from certification lists relating to the original offense.

(6) ~~Civil or criminal~~ Paternity and contempt cases--from appellate certification lists or misdemeanor or felony certification ~~list~~ lists.

(7) Extraordinary remedy cases--from felony, misdemeanor or appellate certification ~~list~~ lists, depending on nature of case.

(8) ~~Mental-Civil or criminal~~ mental reexamination cases--from ~~civil-commitment~~ certification ~~list~~ lists relating to the original proceeding.

SECTION 34. SPD 2.10(2)(c) is amended to read:

(c) The client's full name, address, phone number, and present location;

SECTION 35. SPD 2.12 is amended to read:

SPD 2.12 INVESTIGATIVE AND EXPERT SERVICES FOR PRIVATE ATTORNEYS.

(1) The state public defender ~~shall~~ may 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~~ may authorize the private attorney to retain ~~such~~ investigatory services ~~as~~ that may reasonably be required, and ~~such~~ the 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~~ that expert assistance. The state public defender ~~shall~~ may approve ~~such~~ the request ~~unless the state public defender and the chairperson of the board or a board member designed by the chairperson find that such request or the anticipated fee is unreasonable. The state public defender shall compensate the assistance approved under this provision.~~ In the event of approval, the state public defender shall provide reimbursement for the assistance.

SECTION 36. SPD 3.02(1) is amended to read:

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, except as provided by sub. (2):

	In counties in which hourly rate is \$40 or more	In counties- in which hourly rate is less than \$40-
	<u>Milwaukee County</u>	<u>Other Counties</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
<u>Paternity</u>	<u>800</u>	<u>700</u>
Appeal to court of appeals <u>Appeals</u>	2000	1500

SECTION 37. SPD 3.02(2) is renumbered 3.02(3) and amended to read:

SPD 3.02(3) ~~Beginning in July, 1979, and every July thereafter,~~ the The state public defender shall ~~survey the attorneys certified under s. 977.08, and the~~ periodically review the actual cost of retaining private counsel and report these findings to the state public defender board. The state public defender board may revise the schedule of the "anticipated cost of retaining counsel."

SECTION 38. SPD 3.02(2) is created to read:

SPD 3.02(2) The cost of retaining counsel for any proceeding not covered by the schedule in sub. (1) shall be established by the state public defender.

SECTION 39. SPD 3.03(1)(b) is amended to read:

(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~~ that property; and

SECTION 40. SPD 3.03(2) is amended to read:

SPD 3.03(2) The "amount required to provide the necessities of life," means ~~100% of the standards~~ the payment amount specified in s. 49.19(11)(a)1, plus other specified, emergency, or essential costs and the cost of posting bond to obtain release.

SECTION 41. SPD 3.03(4) is amended to read:

SPD 3.03(4) For the purposes ~~of this section~~ of determining a person's eligibility for the assignment of publicly compensated counsel, felony and appellate cases are pending for 8 months, all other cases for 4 months.

SECTION 42. SPD 3.035 is amended to read:

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~~ that assistance shall be added to the "anticipated cost of retaining counsel" under SPD 3.02.

SECTION 43. SPD 3.035(2) is repealed.

SECTION 44. SPD 3.04(1) is amended to read:

SPD 3.04 PARTIAL INDIGENCY. (1) If the person has insufficient assets to retain counsel, the state public defender shall provide counsel under s. 977.08, Stats., and may require the person to make payments to the state in partial payment of legal fees, at the prevailing state public defender hourly rate. ~~provided, however, that such~~ The payments shall may not exceed the actual value of the legal services ~~provided~~ as determined ~~by the rate set by the state public defender board in s. SPD 3.02(1).~~ ~~Such payment agreement shall be in writing in conformity to s. 977.07(7).~~

SECTION 45. SPD 3.04(2) is repealed.

SECTION 46. SPD 3.05(1) and (2) are amended to read:

SPD 3.05 SWORN STATEMENT. (1) All persons provided with publicly compensated counsel shall be required to give a sworn statement of their assets, liabilities, and expenses. ~~Such document shall be a public document.~~

(2) The state public defender and county designee shall retain for 5 years all indigency evaluations whether or not a person was determined to be indigent and the county designee shall forward to the state public defender on a ~~biweekly~~ monthly basis copies of all indigency evaluations.

SECTION 47. SPD 3.06 is created to read:

SPD 3.06 ACCESS TO STATEMENTS OF ASSETS, LIABILITIES, AND EXPENSES. (1) Access to statements of assets, liabilities, and

expenses of persons provided with publicly compensated counsel may not be granted to any person during the pendency of the action for which they are prepared. At the conclusion of the action, the statement of assets, liabilities, and expenses shall be placed in the court file upon the request of anyone, unless release is prohibited by court order under sub. (4)(b).

(2) Each prospective client shall be given the following information at the commencement of the eligibility interview:

(a) The financial information provided during the interview will be recorded in the statement of assets, liabilities, and expenses and shall be as complete and accurate as possible, since the prospective client will be required to swear to the accuracy of the statement at the conclusion of the interview; and

(b) A material misrepresentation about the prospective client's financial condition that is incorporated into the statement and sworn to by the prospective client may be the basis for prosecution for the felony crime of false swearing.

(3) During the pendency of the action, when a prospective client has been found eligible for representation, questions of eligibility shall be resolved pursuant to s. 977.07(3), Stats.

(4) Upon the conclusion of the action, a written request for release of the statement of assets, liabilities, and expenses may be made to the local representative of the state public defender for the county in which the action took place. The client's attorney and the state public defender regional supervisor for the county in which the action took place shall review and respond to each request within 10 business days in the following manner:

(a) Unless they believe that the release of the statement will violate the legal rights of the client or the ethical obligations of counsel, the statement shall be filed with the clerk of courts.

(b) If they believe that the release of the statement will violate the legal rights of the client or the ethical obligations of counsel, they shall file a motion in the court in which the action was heard for an order prohibiting the release of the statement. If the motion is granted, a sealed copy of the statement shall be filed with the clerk of courts. If the motion is denied, the statement shall be filed with the clerk of courts. The statement shall remain sealed during the course of any appeal on the motion.

(c) The local representative shall promptly notify the party requesting release of the statement of the action taken.

SECTION 48. SPD 4.02 is amended to read:

SPD 4.02 SUBMISSION OF BILL. ~~At~~ Within 6 months of the conclusion of the case, the private attorney shall submit the billing form to the Madison local 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 at the rate established by statute under s. 977.08(4m), Stats.

SECTION 49. SPD 4.03(2), (3), (4), and (6) are amended to read:

SPD 4.03(2) Upon receipt of ~~such~~ an appeal letter, the state public defender shall place the matter on the agenda of the next state public defender board meeting unless ~~such~~ that 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 the 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, Stats.

(4) The state public defender board may deliberate the matter in executive session pursuant to the provisions of s. 19.85(1)(a), Stats. The board shall issue a written decision either affirming or ~~in-some-way~~ modifying the decision of the state public defender. ~~Such~~ The written decision shall be mailed to the ~~aggrieved~~ attorney within 5-20 days of the board meeting and shall be signed by an officer of the board.

(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~~ the payment as soon as possible.

SECTION 50. SPD 4.04 is created to read:

SPD 4.04 ATTORNEY COMPENSATION FROM CLIENT PROHIBITED. An attorney representing clients for the state public defender program may not solicit, attempt to solicit, or receive compensation from the attorney's client in addition to any compensation which the attorney has received or expects to receive from the state public defender pursuant to this chapter.

The rules, amendments, and repeals contained in this proposed order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.026(1)(intro.), Stats.

Dated: September 14, 1984.

STATE PUBLIC DEFENDER BOARD



BRENT SMITH, Chair

FINAL REGULATORY FLEXIBILITY ANALYSIS

No new reports or other methods or investments will be required for complying with the proposed rules. The proposed rules do not contain design or operational standards. Consequently, there is no reason to include any of the methods specified under s. 227.016(2), Stats., for reducing the rules' impact on small business. In addition, special treatment for law practices that qualify as small businesses would undermine the mandate of s. 977.08, Stats., to treat all certified attorneys in a uniform, evenhanded manner.

No issues were raised by small businesses during the hearings on the proposed rules.

FISCAL ESTIMATE

The Office of the State Public Defender is funded with state GPR funds. There is no increase or decrease to the Office's appropriations anticipated from these proposed rules. Therefore, as drafted, these rules would not have a state GPR fiscal effect.

Section 45 of the proposed rules would eliminate the requirement that persons confined to institutions remit all assets in excess of \$200 in partial payment of legal fees. Fees collected from individuals provided representation through the Office of the State Public Defender are deposited in the state's general fund as GPR-Earned. The potential reduction cannot be specifically determined, because information is not readily available on the level of collections from individuals who are in institutions. However, it appears that any reduction would be minimal, because collections from individuals in institutions are assumed to be relatively small.

It is anticipated that these proposed rules would not have a fiscal effect on counties, cities, villages, towns, school districts, vocational, technical and adult education districts or sewerage districts.