

CR 91-110

STATE OF WISCONSIN

OFFICE OF THE STATE PUBLIC DEFENDER

I, Daniel M. Berkos, Chair of the State Public Defender board and custodian of the official records, certify that the annexed rules relating to cost of retaining counsel and partial indigency were duly approved and adopted by this board on July 20, 1991.

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

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 11th day of December, 1991.

*Daniel M. Berkos*

DANIEL M. BERKOS

Chair, State Public Defender Board

REVISOR OF STATUTES  
4:10 PM  
DEC 13 1991

2-1-92

PROPOSED ORDER OF THE STATE PUBLIC DEFENDER BOARD  
AMENDING AND REPEALING RULES

An order to amend ss. SPD 3.02 (1) and 3.04 (1) and to repeal s. SPD 3.035, relating to cost of retaining counsel and partial indigency.

Analysis:

Pursuant to the authority specified in SPD 3.02 (3), the State Public Defender Board has revised the "cost of retaining counsel" schedule. The schedule is used in the indigency determination process by comparing the net amount of money a prospective client has available to hire counsel, with the typical amount an individual would have to pay a private attorney to handle his or her case. The proposed amendments are based on the results of a 1990 survey conducted by the State Public Defender. The schedule has not been updated since 1978.

The proposed rule also repeals SPD 3.035 which provides that the anticipated cost of counsel may be increased if it appears that it will be necessary to retain expert assistance in a case. The rule is difficult to administer and is used sporadically by staff because of the difficulty in anticipating the expert costs at the time an indigency determination is made.

Lastly, the proposed rule establishes a system of flat rates for the recoupment of costs in cases in which a client has been determined to be partially indigent. The rate is set at 20% of the applicable cost of retaining counsel in a given type of case. Currently the SPD collection efforts cannot begin until after a case is closed because recoupment is based on an hourly rate and that is when the amount owed is computed. This method of collections has proven to be ineffective. This proposed rule follows the recommendations of the National Institute of Justice which suggests establishing a flat rate and starting collections while the case is pending.

Statutory authority: s. 977.02, Stats.

Statutory interpretation: s. 977.07, Stats.

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

SPD 3.02 (1) The "anticipated cost of retaining counsel," shall be determined by this schedule, except as provided by sub. (2):

	Milwaukee County	Other Counties
1st or 2nd degree murder <u>intentional homicide</u>	<del>\$3500</del> <u>6600</u>	<del>\$3000</del> <u>5650</u>
Other armed <u>Class A &amp; Class B</u> felony	<del>\$2200</del> <u>3400</u>	<del>\$1800</del> <u>2800</u>
<del>Drug-related felony</del>	<del>\$1600</del>	<del>\$1200</del>
Other felony	<del>\$1600</del> <u>1900</u>	<del>\$1200</del> <u>1450</u>
Traffic misdemeanor	\$400	\$300
Other misdemeanor	\$500	\$400
Juvenile	\$500	\$400
Civil commitment	\$565	\$450
Paternity	\$800	\$700
Appeals	\$2000	\$1500

SECTION 2. SPD 3.035 is repealed.

SECTION 3. SPD 3.04 (1) is amended to read:

SPD 3.04 (1) If the person has insufficient assets to retain counsel, the state public defender shall provide counsel under s. 977.08, Stats., and the court or the state public defender may require the person to make payments to the state in partial payment of legal fees, ~~at the prevailing state public defender hourly rate. The partial reimbursement required shall be equivalent to 20% of the applicable cost of retaining counsel in the case, as set forth in s. SPD 3.02 (1), except the amount shall not exceed the person's available assets in excess of \$100.00. The payments shall be equivalent to the full amount of available assets, except payments may not exceed the actual value of the legal services as determined in s. SPD 3.02 (1).~~

This rule shall take effect on the first day of the month commencing after the date of publication, pursuant to s. 227.22 (2) (intro.), Stats.

Wisconsin State Public Defender Board

REVISOR OF STATUTES

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By: Daniel M. Berkos  
DANIEL M. BERKOS, CHAIR