

CR 92-46

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 the calculation of indigency were duly approved and adopted by this board on April 10, 1992.

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 9th day of September, 1992.

Daniel M. Berkos

DANIEL M. BERKOS
Chair, State Public Defender Board

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Revisor of Statutes
Bureau

11-1-92

PROPOSED ORDER OF THE STATE PUBLIC DEFENDER BOARD CREATING
AND AMENDING A RULE

An order to renumber and amend SPD 3.038 and create SPD 3.038 (2), relating to the calculation of indigency.

ANALYSIS

The SPD is directed by statute to determine the indigency of applicants for its services by calculating the applicant's assets and income, subtracting the applicant's living expenses, and comparing the difference to an attorney cost table.

With regard to expenses, the statute states in relevant part: ". . . reasonable and necessary living expenses equal the applicable payment amount under s.49.19(11)(a)1 plus other specified, emergency or essential costs." Section 49.19(11)(a) sets AFDC payment levels.

This rule takes administrative notice of the fact that applicants whose sole income are AFDC, general relief or RNIP are overwhelmingly eligible for Public Defender services because the entitlement payment level sets the standard for expenses. By using these entitlement standards as a means for determining the persons living expenses, the agency is fulfilling its statutory duty under s. 977.907(2)(a), Stats. to use specific written standards related to income and assets. At the same time, the agency is eliminating government waste by allowing our staff to rely upon the work of full-time social services workers whose jobs require them to determine whether a person is eligible for one of these programs. (NOTE: Indigency evaluations are currently conducted by more than 250 people--most of the SPD's trial division attorneys, investigators and secretaries. The evaluations are often conducted in jail holding cells, courtroom hallways, and office waiting rooms, in situations which require them to be done quickly. The average time available to complete the evaluation is 15 minutes or less. Reliance on AFDC, general relief and RNIP social work staff findings of entitlements will streamline this process for some clients.)

Statutory authority: s. 977.02 (3), Stats.
Statutes interpreted: s. 977.07 (2) (a), Stats.

Section 1.

SPD 3.038 is renumbered 3.038 (1) and amended to read:

SPD 3.038 Calculation of indigency. (1) A Except as provided in sub. (2). a person's available assets as determined under s. SPD 3.03 shall be compared to the anticipated cost of retaining counsel as specified under s. SPD 3.02 as follows:

Section 2.

SPD 3.038 (2) is created to read:

SPD 3.038 (2) If a person's only income is aid to families with dependent children under s. 49.19 (11) (a) 1, Stats., relief of needy Indian persons under s.49.046, or general relief as defined in s. 49.01 (5m), Stats., that person shall be determined indigent.

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.

Dated: 4/21/92

Wisconsin State Public Defender Board

By: Daniel M. Berkos

Daniel M. Berkos, Chair
State Public Defender Board