

CR 92-65

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 certification of private attorneys 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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11-1-92

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

An order to amend SPD 1.04 (2) (intro.), (b) and (d), (3) (b) and (d), (5) (b), (7), (8) (a) (intro.) and (c) and (9), 1.06 (1) and (2), 1.07 and 1.08 (1); to repeal and recreate SPD 1.04 (1); to create SPD 1.04 (2m) and to repeal SPD 1.04 (2) (c), (3) (c), (4) and (8) (a) 2 and 1.06 (4), relating to certification of private attorneys.

ANALYSIS

The proposed amendment would clarify and change standards for certifying private attorneys to handle Public Defender cases.

The most significant change made by this proposed amendment is to specify additional certification criteria for juvenile cases, mental commitments, probation and parole revocations, and writs and extradition. Currently, any attorney who is admitted to the State Bar and who requests certification is entitled to handle these cases (as well as misdemeanors) if s/he complies with minimal continuing legal education requirements.

The SPD has continually received complaints from judges, clients and other attorneys that some SPD-certified attorneys do not know the specialized substantive and procedural law which governs the types of cases listed above. This lack of specialized knowledge results in inefficiency in the handling of these cases, and in some cases, below-standard representation of clients.

The proposed rule change would ensure that each certified attorney has received at least a brief introduction to the type of law s/he will practice. It is the SPD's plan to provide a seminar, at least annually, which will provide the information and the credits necessary to achieve certification in these areas. The seminar would be provided at a minimal cost. However, other legal educational courses may be substituted for the SPD-provided training.

The proposed amendment also reduces the number of continuing CLE hours in SPD-related courses from seven annually, to six. It also clarifies that this CLE requirement is required during the period of certification, rather than before certification.

The proposed amendment would also require that an attorney who voluntarily removes him/herself from certification, must reapply for certification if that attorney has been inactive for more than three years.

Finally, the proposed rule clarifies the rule on access to files, by extending confidentiality to any person who provides information to the SPD regarding an attorney's fitness for certification.

Statutory authority: s. 977.02 (5), Stats.

Statutes interpreted: ss. 977.05 (5) (e) and 977.08 (3) (a) and (b), Stats

SECTION 1. SPD 1.04 (1) is repealed and recreated to read:
SPD 1.04 (1) **Misdemeanor certification.** An attorney shall be certified for misdemeanor and paternity cases if the attorney has requested certification and the attorney is admitted to the state bar of Wisconsin.

SECTION 2. SPD 1.04 (2) (intro.) (title) and (b) are amended to read:
SPD 1.04 (2) (intro.) **Felony certification.** An attorney shall be certified for felony cases involving a felony offense bearing a maximum penalty of less than 20 years imprisonment if:

(2) (b) The attorney is admitted to the state bar of Wisconsin; and

SECTION 3. SPD 1.04 (2) (c) is repealed.

SECTION 4. SPD 1.04 (2) (d) is renumbered 1.04 (2) (c) and amended to read:
SPD 1.04 (2) (c) Either, within the past five years:

SECTION 5. SPD 1.04 (2m) is created to read:
SPD 1.04 (2m) **Other certification.** (a) Except as provided for in pars. (c) and (d), an attorney shall be certified for the types of cases specified in the following schedule if the attorney has been certified for misdemeanors and has completed the indicated number of credits of state public defender provided legal education:

<u>TYPE OF CASE</u>	<u>CREDITS</u>
Chapter 51 & 55	2
Juvenile-ss.48.12 and 48.13, Stats.	4
Termination of Parental Rights	4 (plus completion of 4 credits for juvenile certification)
Probation & Parole Revocations	2
Writs & Extradition	1

(b) 1. Paragraph (a) only applies to attorneys who seek certification after January 1, 1993. However, except as provided under subd. 2, any attorney who seeks certification after January 1, 1993 shall be conditionally certified under this subsection for 6 months if he or she agrees, in writing, to complete the indicated number of credits specified in par. (a) within 6 months of the date that he or she was conditionally certified. Upon an attorney's request, the state public defender may extend the conditional certification for an additional 6 months.

2. Conditional certification under this subsection is not available for attorneys who represent clients in termination of parental rights cases or juvenile waiver cases.

(c) With the approval of the state public defender, an attorney may substitute other accredited training for state public defender provided legal education.

(d) An attorney may be assigned a revocation case, whether or not he or she is certified for revocations, when that attorney has a prior pending case with the same client.

SECTION 6. SPD 1.04 (3) (b) is amended to read:
SPD 1.04 (3) (b) The attorney is admitted to the state bar of Wisconsin; and

SECTION 7. SPD 1.04 (3) (c) is repealed.

SECTION 8. SPD 1.04 (3) (d) is renumbered (c) and amended to read:
SPD 1.04 (3) (c) Either, within the past five years:

SECTION 9. SPD 1.04 (4) is repealed.

SECTION 10. SPD 1.04 (5) (b), (7) and (8) (a) (intro.) are amended to read:
SPD 1.04 (5) (b) ~~The attorney has attended in person or by video tape, a presentation which covers in detail the Wisconsin Rules of Appellate Procedure which has been approved in advance by the chief of the appellate unit of the state public defender's office, and has also completed the continuing 3 credits of state-public-defender-provided legal education on appellate procedure required by these rules; or~~

(7) Attorneys employed by the state public defender shall meet ~~the same criteria equivalent to~~ as certified private attorneys.

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

SECTION 11. SPD 1.04 (8) (a) 2 is repealed.

SECTION 12. SPD 1.04 (8) (a) 3 is renumbered 2 and amended to read:
SPD 1.04 (8) (a) 2 The attorney fails to meet the education or experience criteria set forth herein.

SECTION 13. SPD 1.04 (8) (c) and (9) are amended to read:
SPD 1.04 (8) (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 submission of a written notification to the state public defender that the attorney is no longer ~~excluded~~ disqualified, provided further that such attorney had previously submitted a timely and properly prepared certification application.

(9) Any attorney certified under ch. SPD 1 shall complete ~~7~~ 6 hours of continuing legal education each calendar year in courses approved by the 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 14. SPD 1.06 (1) and (2) are amended to read:
SPD 1.06 (1) Any interested party, or the assigned counsel chief on his or her own motion, may request, in writing, that an attorney, previously certified to accept cases from the state public defender, be removed for cause. Upon receipt of 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 any attorney and the ~~state public defender's recommendation for removal~~ attorney's request for review, the board shall review the investigation and recommendation. Upon request of 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 the attorney or confirm the suspension. The board shall render a decision within 60 days of the hearing.

SECTION 15. SPD 1.06 (4) is repealed.

SECTION 16. 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 the attorney until notified in writing by the attorney that the attorney wishes to be placed back on the list. If an attorney is inactive for more than 3 years, the attorney shall reapply for certification.

SECTION 17.

SPD 1.08 (1) is amended to read:

SPD 1.08 (1) The state public defender 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), Stats.,~~ person who has initiated or responded to an inquiry relating to the fitness of an attorney for certification, unless ordered to do so by the public defender board or a court.

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: 9/9/92

Wisconsin State Public Defender Board

By: Daniel M. Berkos
DANIEL M. BERKOS, CHAIR
State Public Defender Board