

STATEMENT OF SCOPE
PUBLIC DEFENDER BOARD

Rule No.: PD 8

Relating to: Fees paid for Electronic Discovery

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not applicable.

2. Detailed description of the objective of the proposed rule:

The State Public Defender Board (SPD) proposes to amend Wisconsin Administrative Code PD 8.02 as authorized by Wis. Stat. s. 977.02(9) to set a maximum fee to be paid for discovery that is received electronically and other formats not currently addressed by the code.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The existing rule sets rates that the SPD will pay for paper discovery, CDs, DVDs, photographs, VCR tapes and audio cassette tapes. Increasingly the SPD receives discovery in updated electronic formats, specifically web or cloud-based platforms, flash drives, and by email.

Agencies that provide the SPD with discovery have asked for the SPD's rate on the new formats. For budgetary and planning reasons, the Board has identified the need to evaluate and set a maximum rate for these different types of discovery.

The alternative of not conducting this evaluation and update would be to leave the rules unchanged, which would result in continued confusion and variation in the amount the SPD is charged for discovery.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. s. 977.02(9) states the board shall “[p]romulgate rules establishing the maximum fees that the state public defender may pay for copies, in any format, of materials that are subject to discovery in cases in which the state public defender or counsel assigned under s. 977.08 provides legal representation. In promulgating the rules under this subsection, the board shall consider information regarding the actual, necessary, and direct cost of producing copies of materials that are subject to discovery.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

100 hours. Staff time will largely be required to draft the rule, work with partners and stakeholders, have public hearings, and to follow the rules promulgation process.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rule may affect district attorney's offices, police and sheriff's departments, corporation counsel and any other entity engaged in the prosecution of a case and subsequent production of discovery materials.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

N/A

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will almost exclusively impact government entities. There will be no to minimal economic impact on small business or the state economy broadly.

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