

Chapter PD 1 CERTIFICATION

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Note: Chapter SPD 1 was renumbered chapter PD 1 under s. 13.93 (2m) (b) 1., Stats., Register, July, 1995, No. 475.

PD 1.01 Annual review. (1) The state public defender shall annually notify each active member of the state bar of Wisconsin of the procedure 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.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; r. and recr. (1) and (2), r. (3), Register, November, 1984, No. 347, eff. 12-1-84.

PD 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, Stats.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. Register, November, 1984, No. 347, eff. 12-1-84.

PD 1.03 Certification application. The state public defender shall prepare an application to be completed by attorneys seeking certification as provided in s. 977.08 (3), Stats.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78.

PD 1.035 Residency requirements. In addition to the certification criteria listed in s. PD 1.04, the following requirements exist for certification.

(1) An attorney must reside or maintain his or her principal office in Wisconsin. A post office box in Wisconsin does not constitute a residence or principal office in Wisconsin.

(2) An attorney may be certified for trial division cases only in those counties in which he or she resides or maintains his or her principal office, except that in counties in which there are less than 10 attorneys on any certification list, an attorney residing or maintaining his or her principal office in one or more adjacent counties may also be certified for that county.

(3) Notwithstanding subs. (1) and (2), the state public defender may, on a case-by-case basis, certify an attorney to handle a case if such certification is necessary for effective client representation. Considerations include, but are not limited to, case-load, availability of other counsel, proximity to the court, and cost-effectiveness.

History: Cr., Register, July, 1997, No. 499, eff. 8-1-97.

PD 1.04 Certification criteria. (1) 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.

(2) An attorney shall be certified for felony cases involving a felony offense bearing a maximum penalty of less than 20 years imprisonment if:

- (a) The attorney has requested certification;
- (b) The attorney is admitted to the state bar of Wisconsin; and

(c) Either, within the past 5 years:

- 1. Has served one year as a prosecutor;
- 2. Has served one year as a public defender;
- 3. Has been trial counsel alone of record in 5 misdemeanor cases brought to final resolution;
- 4. Has been trial counsel alone of record in 2 felony cases brought to final resolution; or
- 5. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in 2 cases, civil, criminal, or juvenile, that have been tried to a jury to final resolution.

(2m) (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:

| Type of Case | Credits |
|-------------------------------------|--|
| 1. Chapters 51 & 55 | 2 |
| 2. Juvenile—chs. 48 and 938, Stats. | 4 |
| 3. Termination of Parental Rights | 4 (plus completion of 4 credits for juvenile certification) |
| 4. Probation & Parole Revocations | 2 |
| 5. Writs & Extradition | 1 |

Note: Line 2 does not include termination of parental rights (TPR) cases. Line 3 applies to TPR cases.

(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.

(3) An attorney shall be certified for felony cases involving a felony offense bearing a maximum penalty of 20 or more years imprisonment if:

- (a) The attorney has requested certification;
- (b) The attorney is admitted to the state bar of Wisconsin; and
- (c) Either, within the past 5 years:
 - 1. Has served 2 years as a prosecutor;

2. Has served 2 years as a public defender; or
3. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in 5 cases, civil, criminal, or juvenile, that have been tried to a jury to final resolution.

(5) (a) *Certification for appellate cases in general.* An attorney shall be certified for appellate cases if he or she meets all of the following requirements:

1. The attorney has requested certification.
2. The attorney is licensed in good standing to practice law in this state.
3. The attorney meets the applicable qualifications in pars. (c) to (f).

(b) *Power of appellate division director.* Notwithstanding pars. (c) to (f), the director of the appellate division may determine whether an attorney's education or experience may be substituted for compliance with the qualifications under pars. (c) to (f) and may deny certification for good cause.

(bc) *Provisional appellate certification.* The appellate division director, or his or her designee, may provisionally certify attorneys to receive appointments for appellate cases;

1. The appellate division director may change an attorney's certification status to provisional certification in lieu of initiating decertification.

2. All appellate certifications granted after January 1, 2003, shall be provisional certifications.

3. After one year of provisional certification, the appellate division director, or his or her designee, shall review the performance of the attorney and determine whether the provisional certification should continue, the provisional certification should become non-provisional, or the attorney should be excluded from the appellate certification list.

4. The review may include file reviews, brief reviews, phone conferences, personal conferences, client communications, and reviews of court records. Appellate division performance standards shall provide a guide to determining whether the provisional certification should be continued, discontinued, or converted to non-provisional certification, but the determination of certification status is at the discretion of the appellate division director, or his or her designee.

5. If the provisional certification is continued under subd. 3., the attorney's performance shall be reviewed again after a period of time set by the appellate division director, or his or her designee, not to exceed one year.

6. Appeals from decisions under this paragraph shall proceed as provided in s. PD 1.05.

(c) *Level one.* Level one certification means the attorney is certified for misdemeanor cases, sentencings after revocation of probation or parole and any pleas to class E felonies. An attorney is qualified for certification at this level if the attorney has done either of the following:

1. Filed one brief-in-chief in any appellate court in the United States in the 5 years immediately preceding application for certification. A copy of the brief must accompany the application for certification.

2. Completed 3 credits of state public defender approved legal education on appellate procedure, or its equivalent, including a law school course, clinical program or judicial clerkship, in the 3 years immediately preceding application for certification.

(d) *Level 2.* Level 2 certification means the attorney is certified for level one cases and cases involving any pleas to class B, C, or D felonies, and trials in which the defendant was convicted of a class C, D, or E felony. An attorney is qualified for certification at this level if the attorney has done all of the following:

1. Filed a minimum of 2 briefs-in-chief in Wisconsin appellate courts that complied with s. 809.30 or 809.40, Stats., in the 5 years immediately preceding application for certification. A copy

of one of the briefs must accompany the application for certification.

2. Conducted a minimum of 3 contested trial court hearings, including one evidentiary hearing, in the 5 years immediately preceding application for certification.

3. Met the criteria of par. (c) 2. or attended 6 hours of state public defender approved legal education in criminal law within one year immediately preceding application for certification.

(e) *Level 3.* Level 3 certification means the attorney is certified for level 2 cases, cases involving any pleas to class A felonies and trials in which the defendant was convicted of a class A or B felony. An attorney is qualified for certification at this level if the attorney has done all of the following:

1. Filed a minimum of 3 briefs-in-chief in the Wisconsin Supreme Court or the Wisconsin Court of Appeals that complied with s. 809.30 or 809.40, Stats., in the 5 years immediately preceding application for certification. At least one of the briefs must have been in a felony jury trial case and this brief must accompany the application for certification.

2. Conducted a minimum of 3 evidentiary hearings in criminal cases, one of which must have been a trial or postconviction hearing, in the 5 years immediately preceding application for certification.

3. Met the criteria of par. (c) 2. or attended 6 hours of state public defender approved legal education in criminal law in the year immediately preceding application for certification.

(f) *Specialized areas of certification.* Specialized areas of certification include any of the following:

1. Termination of parental rights cases. An attorney is qualified for certification in termination of parental rights cases if the attorney meets the criteria of par. (e), and:

- a. Has completed 4 credits of state public defender approved legal education in termination of parental rights cases in the year immediately preceding application for certification; or

- b. Has been sole trial or appellate counsel of record in at least one contested termination of parental rights case in the 3 years immediately preceding application for certification.

2. Other juvenile cases under chs. 48 and 938, Stats. An attorney is qualified for certification in other juvenile cases under chs. 48 and 938, Stats., if the attorney meets the criteria of par. (c), and:

- a. Has been sole trial counsel of record in at least 5 completed juvenile cases in the 3 years immediately preceding application for certification; or

- b. Has completed 4 credits of state public defender approved legal education in cases under chs. 48 and 938, Stats., in the year immediately preceding application for certification.

3. Cases under chs. 51 and 55, Stats. An attorney is qualified for certification in cases under chs. 51 and 55, Stats., if the attorney meets the criteria of par. (c), and:

- a. Has been sole trial counsel of record in 5 cases under chs. 51 and 55, Stats., in the 3 years immediately preceding application for certification; or

- b. Has completed 2 credits of state public defender approved legal education in cases under chs. 51 and 55, Stats., in the 3 years immediately preceding application for certification.

4. Cases under ch. 980, Stats. An attorney is qualified for certification in cases under ch. 980, Stats., if the attorney meets the criteria of par. (e), and:

- a. Has completed a minimum of 2 credits of state public defender approved education in cases under ch. 980, Stats., in the year immediately preceding application for certification; or

- b. Has been sole trial or appellate counsel of record in at least one contested commitment under ch. 980, Stats., in the 3 years immediately preceding application for certification.

(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. Special-

ized lists within sub. (3) for cases requiring exceptional expertise may be developed with the approval of the state public defender.

(8) (a) An attorney may be excluded by the state public defender on the following grounds:

1. The attorney is disbarred, suspended, or has surrendered a license to practice law in this state;

2. The attorney fails to meet the education or experience criteria set forth herein.

(b) The state public defender may exclude from a certified list any attorney barred by statute from engaging in criminal representation.

(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 a submission of a written notification to the state public defender that the attorney is no longer disqualified, provided further that such attorney had previously submitted a timely and properly prepared certification application.

(9) Any attorney certified under ch. PD 1 shall complete 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.

(10) The state public defender shall offer training for private attorneys seeking certification under this chapter. As used in s. 977.05 (5) (e), Stats., “sponsor” means to use state public defender resources to produce and promote state public defender conferences and training programs. As used in s. 977.05 (5) (e), Stats., “tuition” means all revenue realized from state public defender conferences and training programs and materials.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78; am. Register, August, 1978, No. 272, eff. 9-1-78; r. and recr. (1), renum. (2) to (4) to be (5) to (7) and am. (7), cr. (2) to (4), Register, August, 1981, No. 308, eff. 9-1-81; am. (1) (intro.) and (c), (2) (c) and (d) 5., (3) (c) and (d) 3., renum. (4) to (7) to be (5), (7), (8) and (9) and am. (8) (a) (intro.) and 2. and (9), cr. (4) and (6), Register, November, 1984, No. 347, eff. 12-1-84; am. (5) (a), Register, April, 1990, No. 412, eff. 5-1-90; correction in (9) made under s. 13.93 (2m) (b) 4., Stats., Register, April, 1990, No. 412; r. and recr. (1), am. (2) (b), (3) (b), (5) (b), (7), (8) (a) (intro.), (c) and (a), r. (2) (c), (3) (c), (4) and (8) (a) 2., renum. (2) (d) (intro.), (3) (d) (intro.) and (8) (a) 3. to be (2) (c) (intro.), (3) (c) (intro.) and (8) (a) 2. and am., cr. (2m), Register, October, 1992, No. 442, eff. 11-1-92; correction in (9) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475; r. and recr. (5), r. (7), Register, April, 1996, No. 484, eff. 5-1-96; correction in (5) (c) 1. and (f) made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, July, 1996, No. 487; correction in (2m) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1996, No. 490; cr. (10), Register, August, 1999, No. 524, eff. 9-1-99; **CR 02-110: cr. (5) (bc), am. (5) (d) 3. and (e) 3., Register December 2002 No. 564, eff. 1-1-03.**

PD 1.05 Appeal of certification decisions. **(1)** The state public defender shall notify each attorney who has submitted a certification application 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 particular list of the reasons for the exclusion from a particular list and the manner by which 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 attorney shall state in the letter the certification from which the attorney has been excluded. The letter may also state the reasons the attorney believes the exclusion was improper.

(3) Upon receipt of an appeal letter, the state public defender shall place the matter on the agenda of the next state public defender board meeting unless 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 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 attorney all material relied upon in reaching the certification decision, including the certification application and all written comments received under s. 977.08 (3), Stats.

(5) The attorney may submit to the board any material that he or she believes is relevant to the appeal. The hearing before the board shall be considered a “class 3” proceeding and is governed by ch. 227, 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 modifying the certification decision of the state public defender. The written decision shall be mailed to the attorney within 20 days of the board meeting and shall be signed by an officer of the board.

(7) The board’s written decision shall constitute findings of fact and conclusions of law within the meaning of s. 227.47, Stats.

(8) The board may appoint a panel of board members to conduct the hearing specified in subs. (5) and (6). After reviewing the record of the hearing and receiving the panel’s recommendation, the entire board shall issue a written decision.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1) to (6), Register, November, 1984, No. 347, eff. 12-1-84; corrections in (5) and (7), made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1990, No. 412; am. (5), cr. (8), Register, July, 1997, No. 499, eff. 8-1-97.

PD 1.06 Decertification for cause. **(1)** Any interested party, or the assigned counsel director on his or her own motion, may request in writing that an attorney, previously certified to accept cases from the state public defender, be decertified for cause. Upon receipt of a request, the state public defender shall conduct an investigation. Upon a finding of cause, the state public defender may decertify the attorney. The state public defender shall inform the attorney of the reasons for decertification and the manner by which the attorney may appeal the decision.

(2) An attorney may appeal the state public defender’s decertification decision by mailing a letter of appeal to the state public defender within 30 days of the notice of decertification. The attorney shall state in the letter the reasons why the attorney believes the decertification was improper.

(3) Upon receipt of an appeal letter, the state public defender shall place the matter on the agenda of the next state public defender board meeting unless 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 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 attorney all material relied upon in reaching the decertification decision.

(5) The attorney may submit to the board any material that he or she believes is relevant to the appeal. The hearing before the board shall be considered a “class 3” proceeding and is governed by ch. 227, Stats.

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

(7) The board’s written decision constitutes findings of fact and conclusions of law within the meaning of s. 227.47, Stats.

(8) The board may appoint a panel of board members to conduct the hearing specified in subs. (5) and (6). After reviewing the

record of the hearing and receiving the panel's recommendation, the entire board shall issue a written decision.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81; am. (1) and (2), Register, November, 1984, No. 347, eff. 12-1-84; am. (1) and (2), r. (4), Register, October, 1992, No. 442, eff. 11-1-92; r. and recr., Register, July, 1997, No. 499, eff. 8-1-97.

PD 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.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1), Register,

November, 1984, No. 347, eff. 12-1-84; am. Register, October, 1992, No. 442, eff. 11-1-92.

PD 1.08 Access to files. (1) The state public defender may not disclose to any person except the subject, any comments made by any 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.

(2) Only certified lists, board proceedings and decisions under these rules shall be considered public documents and open to public inspection.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (1), Register, November, 1984, No. 347, eff. 12-1-84; am. (1), Register, October, 1992, No. 442, eff. 11-1-92.