



Wisconsin State Public Defender

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Report From Agency

CR 09-068

Report for Legislative Review Prior to Rule Promulgation (Chapter 51 and 55 Eligibility and Reimbursement)

Proposed rules relating to reimbursement for legal representation provided to state public defender clients in chapter 51 and chapter 55, Stats., cases.

Basis and Purpose of Proposed Rules

The state public defender provides legal representation to persons who are detained under chapters 51 or 55, Wis. Stats., or subject to involuntary administration of psychotropic medication.

2007 Wisconsin Act 20 created secs. 51.60, 51.605, 55.105 and 55.107, Stats., that require the state public defender to provide legal representation in these matters without a predetermination of indigency and allow the court to order reimbursement for the legal services provided by the state public defender. At the conclusion of the proceeding, the circuit court may inquire as to the person's ability to reimburse the state for the cost of representation. The court may require the state public defender to conduct a determination of indigency and report the results of that determination to the court. If the court determines that the individual is able to make reimbursement for the costs of representation, the court may order the person to reimburse the state an amount not to exceed the maximum amount established by the public defender board, currently established in Wisconsin Administrative Code ch. PD 6.01. Any reimbursement is made to the clerk of courts for the county where the proceedings took place. The clerk of each county deposits 25% of the reimbursement payments into the county treasury and transmits the remaining 75% to the secretary of the department of administration to be credited in the state public defender's private bar and investigator reimbursement appropriation. The clerks of court for each county are required to report to the state public defender by January 31 the total amount of court-ordered reimbursements under chapters 51 and 55 for the previous calendar year. The effective date of these statutory provisions was July 1, 2008.

Section 977.02 (2m) allows the state public defender board to promulgate rules regarding eligibility for legal services for persons who are entitled to be represented by counsel without a determination of indigency. Sections 977.02 (4m) and 977.075 allow for the state public defender board to establish rules setting the maximum amount a person subject to sec. 51.605 or 55.107 must pay as reimbursement for legal services. Section 977.02 (4r) allows the state public defender board to promulgate rules that establish procedures to provide the department of administration with any information concerning collection of payments.

The proposed rules make the following changes in chapter 51 and 55 cases:

- Remove the requirement that the state public defender determine indigency or financial eligibility before appointing an attorney
- Remove the client options for prepayment of attorney fees
- Create a new rule for reimbursement of attorney fees at the conclusion of the case
- Require the state public defender to provide a report to the joint committee on finance and the department of administration regarding the collection of reimbursement payments ordered by the court.

Public Comment

The state public defender held a public hearing in Madison on November 30, 2009 from 10:00 a.m. until noon. No one attended the hearing or submitted written comments on the proposed rule.

The proposed rule was posted on the Wisconsin Administrative Rules website on September 4, 2009, and on the state public defender website on October 31, 2009. Persons who were not able to attend a public hearing were able to submit comments on the proposed rules by e-mail, regular mail and the Wisconsin Administrative Rules website. The public comment period closed on December 7, 2009.

Comments from state public defender staff resulted in changes to the final draft of the rule to clarify content and language.

Changes in Plain Language Analysis

None

Changes in Fiscal Estimate

None

Response to Legislative Council Staff Recommendations

All recommendations were adopted in the final draft.