



Wisconsin State Public Defender

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Clearinghouse Rule 10-134

Notice of Hearing State Public Defender Rule PD 6

The State of Wisconsin Public Defender Board (SPD) announces that it will hold a public hearing on the revision of PD 6 Payment for Representation, relating to determining, collecting and processing the payments received from persons as payment for legal representation.

The State Public Defender will hold a public hearing at the time and place shown below:

December 13, 2010
9:30 am to 11:30 a.m.
SPD Administrative Office, Banoul Conference Room
315 N. Henry Street, 2nd Floor
Madison WI 53703

Handi-cap accessibility is in the rear of the building. If you require communication accommodation at the hearing, please call Kathy Pakes, (608) 261-0087, at least 10 days prior to the hearing date.

Appearances at Hearing and Submission of Written Comments

Interested persons are invited to attend the hearing and comment on the rule. Persons appearing may make an oral presentation and are requested to submit their comments in writing. Written comments on the rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by December 13 at 9:30 a.m.. Written comments should be addressed to: Kathy Pakes, SPD, PO Box 7923, Madison, WI 53707-7923, or by email: pakesk@opd.wi.gov.

Copies of Rule

To view the rule online, go to: <http://www.wisspd.org/CAR.asp>

To view the rule fiscal note online, go to: <http://legis.wisconsin.gov/2009/data/fe/AB-395fe.pdf>

You may contact Kathy Pakes at pakesk@opd.wi.gov or by telephone at (608) 266-0087 to request a copy (at no cost) of the rule and fiscal note be sent to you by U.S. mail. Copies of the rule and fiscal note will also be available, at no cost, at the hearing.

Statutes Interpreted

Sections 20.550(1)(fb), 973.06(1)(e), 977.02(3), 977.02(3a-d), 977.075, 977.076 Stats.

Statutory Authority

Sections 20.550(1)(fb), 973.06(1)(e), 977.075, 977.02(3a-d), 977.076, 977.085(3) Stats.

Explanation of Agency Authority

The State Public Defender's Office (SPD) provides constitutionally-mandated legal representation to persons who meet financial eligibility standards. Under the current eligibility standards, which have not been updated since 1987, a person charged with a felony offense, grossing \$290 per week (working 40 hours a week at minimum wage of \$7.25 per hour), with two children, assets of \$300, and a car worth \$2,000, does not qualify for the State Public Defender.

Those who cannot afford an attorney and do not qualify for State Public Defender representation are provided an attorney at county expense. Since 1987, as the cost of living has increased, the number of persons who do not meet the SPD eligibility standards, and who are unable to afford counsel, has increased. Wisconsin counties reported spending nearly \$7.6 million in 2008 to appoint counsel for these indigent individuals.

Recognizing the burden to the counties and need to revise the financial eligibility criteria, 2009 Wisconsin Act 164, published March 29, 2010, mandated that financial eligibility standards for public defender representation be consistent with income guidelines of Wisconsin Works (W2). To carry out these changes, Act 164 directs the Wisconsin State Public Defender Board to promulgate rules regarding the revised determination of indigency. In promulgating these rules Act 164 directs the SPD to consider the costs of effective representation for the type of case in which a person seeks representation, and to consider a person's assets in the manner described in s. 49.145 (Wisconsin Works) when evaluating a persons ability to pay the costs of legal representation.

In order to carry out the mandates of Act 164, including the need for consistency within an agency's administrative rules, Chapter PD 6 (Payment for Legal Representation) is revised at the same time as Chapter PD3 (Determination of Indigency).

Related Statute or Rule

None

Plain Language Analysis

Tying eligibility for representation to W2 (sec. 49.145(3)(a) Stats.) increases the number of clients served by the State Public Defender Agency. The State Public Defender, pursuant to statute, collects payments from clients for legal representation. Revisions to PD 6 correspond to revisions in PD 3.

Summary of, and Comparison with, Existing or Proposed Federal Regulations

There are no existing or proposed federal regulations that address the activities of the proposed rules.

Comparisons with Rules in Adjacent States

Iowa:

Iowa has a statewide public defender system, but no statewide collection system for recovering fees. Instead, the public defender agency notifies individual Clerks of Court of what payment is due, and the courts add this amount to the court costs.

Illinois

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations and collections are made on a county by county basis.

Michigan

Does not have a statewide public defender system. The counties bear the cost of representation. Indigency determinations and collections are made on a county by county basis.

Minnesota

Minnesota has a statewide public defender system. Upon disposition of a case, an individual who has received public defender services shall pay the court a \$75 co-payment for representation provided by a public defender, unless the co-payment is, or has been, waived by the court. This co-payment is a civil obligation and may not be made a condition of a criminal sentence. See Minn. Stat. 611.17

Summary of Factual Data and Analytical Methodologies

N/A

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report

N/A

Effect on Small Business

None

Fiscal Estimate

The changes to PD 6 have no fiscal impact. For the fiscal impact of PD 3, and ACT 164 generally, see:

<http://legis.wisconsin.gov/2009/data/fe/AB-395fe.pdf>

Agency Contact Person

Questions regarding these rules may be directed to Kathy Pakes at pakesk@opd.wi.gov or 315 N. Henry Street, 2nd Floor, Madison, WI 53703.

Place to Submit Comments

Comments may be submitted to Kathy Pakes at pakesk@opd.wi.gov or 315 N. Henry Street, 2nd Floor, Madison, WI 53703.

Dated: November 16, 2010

WISCONSIN STATE PUBLIC DEFENDER BOARD

DANIEL M. BERKOS, Chair

Text of Proposed Rule

Chapter PD 6

REIMBURSEMENT OF LEGAL FEES PAYMENT FOR STATE PUBLIC DEFENDER REPRESENTATION

PD 6.01 ~~Rep~~ayment of attorney costs for legal representation. Except as provided in ~~ssecs.~~ PD 6.02 to 6.055, a person who is responsible for payment for legal representation provided by the state public defender shall ~~reimburse the state public defender for~~ contribute to the cost of the legal representation according to the following schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$ 7500	Misdemeanor	\$ 240
Other Class A or B Felony	\$ 1200	Parole/Probation Revocation	\$ 240
Sexual Predator (s. 980.02) Chapter 980 Proceedings	\$ 1200	Juvenile Felonies/TPRs Termination of Parental Rights	\$ 480
Other Felony	\$ 400	Other Juvenile	\$ 200

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	0		0
Com mitm ent (inclu ding ss. 980.0 & 980.0 9) (Cha pter 51)	\$	Speci al Proc eedin g	\$
	1		1
	2		2
	0		0
Chap ter 55	\$	Pater nity	\$
	4		2
	8		4
	0		0
Appel late/tr ial Cat egory I	\$	Appe llate/ plea Cate gory II	\$
	1		4
	2		8
	0		0
	0		0

PD 6.015 ~~Written notice of repayment~~ payment obligation for legal representation.

- (1) The state public defender shall provide the following information in writing to all persons subject to ~~repayment for legal representation of attorney costs~~ under sec. 977.075(1g), Stats.:
- (a) The optional ~~repayment discount~~ amount in sec. PD 6.02.
 - (b) The maximum amount the person may be required to pay under the applicable fee schedule in sec. PD 6.01.
 - (c) The schedule for periodic payments if the person does not pay the optional ~~repayment discount~~ amount.
 - (d) The procedure to request a determination of ability to pay.
- (2) Written notice is sufficient under this section if mailed to the person's last known address.

PD 6.02 ~~Prepayment Discount~~ Discount option. (1) A client may elect to ~~prepay~~, within 60 days of appointment of counsel by the state public defender, the optional ~~repayment discount~~ amount for ~~the cost of~~ representation specified in the following ~~prepayment fee~~ schedule:

Type of Case	A m o u n t	Type of Case	A m o u n t
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First Degree Intentional Homicide	\$ 600	Misdemeanor	\$ 600
Other Class A or B Felony	\$ 120	Parole/Probation Revo- cations	\$ 600
Sexual Predator (s. 980.02) Chapter 980 Proceedings	\$ 120	TPR Termination of Parental Rights	\$ 600
Other Felony	\$ 60	Special Proceeding	\$ 300

Chapter 980 Post-commitment Proceeding \$30	Paternity	\$ 60
	Appellate	\$ 60
	Appellate	\$ 120

(2) If a client pays the optional prepayment discount amount under sec. (1), the client is not liable for any additional payment for public defender legal counsel for that case.

(3) The 60 day time period in sec. (1) may be extended for good cause.

PD 6.025 Determination of ability to pay. (1) The state public defender shall determine whether persons subject to ~~repayment of attorney costs for legal representation~~ have the ability to pay all, or part of, the costs of representation. A person with ~~any income or assets in excess of the payment amount specified in s. 49.19 (11) (a) 1.,~~ income in excess of the amount specified in sec. 49.001(5), Stats., or assets available to pay the costs of legal representation under sec. PD 3.03(2) has the ability to pay some amount toward these costs. The state public defender may defer the determination of ability to pay until after the time period for payment of the optional ~~prepayment discount~~ amount specified in sec. PD 6.02 has expired.

(2) The state public defender may determine that a person has the ability to pay under any of the following circumstances:

(a) The person is determined to have ~~family income and assets in excess of the payment amount specified in s. 49.19 (11) (a) 1., Stats.~~ income in excess of the amount specified in sec. 49.001(5), Stats., or assets available to pay the costs of legal representation under sec. PD 3.03(2).

(b) The person does not notify the state public defender by the date specified in the notice sent to them under sec. PD 6.015 that they are unable to pay the specified periodic payments.

(c) The person does not comply with a request of the state public defender for information necessary to verify their financial circumstances.

(3) The state public defender may periodically review a person's ability to pay and may rely upon information obtained from employment and tax records to determine ability to pay. When a person originally ~~unable to repay attorney costs for legal representation~~ is later determined to have the ability to pay, the state public defender shall send notice of a periodic payment schedule to the person's last known address.

(4) This section does not apply to persons subject to reimbursement under sec. PD 6.05 or 6.055.

PD 6.03 Multiple related charges. (1) If multiple related charges for one client are issued on separate complaints, the state public defender ~~or designee~~ may waive the reimbursement fee for cases opened under any of the following circumstances:

(a) The multiple complaints allege the issuance of forged or worthless checks on the same account and within a period of three months or less.

(b) The multiple complaints allege offenses arising out of a single incident.

(2) The reimbursement fee for a case opened based on a reissuance of a criminal complaint previously dismissed is waived.

(3) Waiver of reimbursement fees under this section applies both to the reimbursement fee under sec. PD 6.01 and the optional ~~prepayment discount~~ amount under sec. PD 6.02.

PD 6.04 Multiple appointments on the same case. When the same case results in multiple state public defender appointments of counsel for a client for any of the following reasons, the client shall not be charged ~~one reimbursement~~ an additional fee for the case:

(1) The case was reassigned for administrative reasons or because of a conflict of interest.

~~(2) The attorney withdrew because of the client's change of financial circumstances, and the client became indigent and eligible for state public defender representation again.~~

~~(3) The client requested substitution of counsel under s. PD2.04~~

~~(4) (3) The client retained a private attorney who withdrew before completion of the case.~~

~~(5) (4) The client's case was remanded for granted a new trial after a reversal the judgment was vacated on ineffective assistance of counsel grounds.~~

PD 6.045 is created to read: Reimbursement from clients with changed circumstances.

(1) The state public defender may, subject to sec. 977.075(3m), Stats., assess a payment amount in excess of the applicable amount in sec. PD 6.01 if the client is responsible for payment under sec. 977.075, Stats., and after counsel is appointed by the SPD, does not meet the financial criteria specified in sec. PD 3.03.

(2) In assessing a payment amount under (1), the state public defender shall consider the costs of providing the client with representation and the point in the applicable proceeding at which the client no longer met the financial criteria specified in sec. PD 3.03.

PD 6.05 Reimbursement from parents of juveniles.

(1) Pursuant to ~~sssecs.~~ 48.275 (2) (b) and 938.275 (2) (b), Stats., when the court orders reimbursement by the parent of a juvenile, the amount of the reimbursement ~~fee~~ shall be the amount specified in the fee schedule in sec. PD 6.01, subject to the following:

(a) The parent may request, within 30 days of the reimbursement order, that the state public defender determine whether the parent is indigent. If the parent does not make this request or if the parent is determined not to be indigent, the reimbursement ~~fee~~ shall be the amount specified in the fee schedule in sec. PD 6.01.

(b) If the parent is determined to be partially indigent pursuant to sec. PD ~~3.038 (4) (b)~~3.03(7), the reimbursement ~~fee shall be equivalent to 20% not exceed 25%~~ of the applicable cost of retaining counsel in the case, as set forth amount specified in the applicable schedule in sec. PD ~~3.02 (1)~~6.01. If the parent is determined to be indigent, no reimbursement ~~fee~~ shall be assessed.

(2) The state public defender shall report to the court that ordered reimbursement the result of the indigency determination and the amount of the reimbursement ~~fee~~ to be assessed.

(3) If reimbursement by both parents is ordered, the parents are jointly and severally liable for the obligation. The maximum amount for which both parents are obligated is the amount of the reimbursement ~~fee~~ under sec. PD 6.01.

PD 6.055 Reimbursement from persons represented in civil commitment or chapter 55 proceedings.

(1) Except as provided in sec. (2), when the court orders reimbursement under sec. 51.605(1) or 55.107(1), Stats., from a person for whom the state public defender has appointed an attorney in a proceeding under ch. 51 or 55, Stats., the amount of the reimbursement ~~fee~~ shall be the amount specified in the fee schedule in sec. PD

6.01 for a commitment, if the case was filed under ch. 51, Stats., or for a ch. 55, Stats., case, whichever is applicable.

(2) Upon the court's request at or after the conclusion of the proceedings, the state public defender shall conduct a determination of indigency and report the results of the determination to the court.

- (a) If the state public defender is unable to obtain the necessary financial information or if the person is determined not to be indigent, the reimbursement ~~fee may~~ shall not exceed the amount specified in the applicable ~~fee~~ schedule in sec. PD 6.01.
- (b) If the person is determined to be partially indigent as provided in ~~s. PD 3.038 (1) (b)~~sec. PD 3.03(8), the reimbursement ~~fee may~~ shall not exceed 25% of the amount specified in the applicable ~~fee~~ schedule in sec. PD 6.01.
- (c) If the person is determined to be indigent, no reimbursement ~~fee~~ may be assessed under sec. 51.605 or 55.107, Stats.

PD 6.06 Referral to department of administration. The state public defender shall refer to the department of administration a collection account of a person who has been determined able to pay, ~~and~~ has not paid the optional ~~prepayment~~ discount amount, ~~if the person~~ has been given a monthly payment schedule and has missed a monthly payment by more than 10 days.

PD 6.07 Representation regarding ~~repayment~~ of attorney fees. The state public defender shall not provide representation to a person on the issue of the ~~repayment~~ amount owed to the state public defender.

PD 6.08 Reports on status of collections. The state public defender shall submit quarterly reports to the joint committee on finance and to the department of administration regarding the collection of payments ordered under ~~ss.secs.~~ secs. 48.275 (2), 51.605, 55.107, 757.66, 938.275, 977.06, 977.07 (2), 977.075, and 977.076, Stats. These reports shall include the amount collected and the amount of accounts receivable referred to the department of administration during each reporting period.