



# Wisconsin State Public Defender

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## Clearinghouse Rule 13-049

### SS 043-13

#### **Notice of Proposed Order of the Office of the State Public Defender Adopting Rules (Wis. Admin. Code Chapter PD 3.02(1), 6.01, & 6.02(1))**

The State of Wisconsin Public Defender Board (SPD) proposes an order to amend PD 3.02(1), cost of retained counsel; PD 6.01, payment for legal representation; and PD 6.02(1), discount option.

#### **Statutes Interpreted**

Sections 977.02(3)(a) and (4m), 977.075

#### **Statutory Authority**

Sections 977.02(3)(a) and (4m), 977.075

#### **Agency Authority**

Section 977.02(3)(a) requires the public defender board to consider the anticipated costs of effective representation for the type of case in which the person seeks representation. Section 977.02(4m) requires the state public defender board to promulgate rules for payments to the state public defender under s. 977.075. Section 977.075 requires the state public defender board to establish by rule a fee schedule that sets the amount that a client responsible for payment shall pay for the cost of the legal representation if the client does not pay the applicable discount fee.

#### **Related Statutes or Rules**

None

#### **Plain Language Analysis**

This proposed rule will revise three sections of the PD administrative code to include a new “felony diversion” case category. This proposed case category will apply to cases in which the SPD and the prosecutor negotiate felony diversion agreements as an alternative to the filing of formal criminal charges.

SPD case categories reflect the anticipated cost of retained counsel and set the required payment amounts for legal representation. The proposed rule adds the felony diversion case category to three schedules: cost of retained counsel, PD § 3.02(1); payment for legal representation, PD § 6.01; and discount option, PD § 6.02(1). The SPD currently provides representation in diversion cases within the case category of “special proceedings.” The new felony diversion case category will more accurately reflect the amount of time attorneys spend when representing clients in felony diversion cases.

#### **Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations**

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

#### **Comparison with Rules in Adjacent States**

Adjacent states (Illinois, Iowa, Michigan, and Minnesota) generally require defendants to reimburse the state or county for the cost of public counsel. Those states do not have rules like Wisconsin regarding the cost of retained counsel, payment for legal representation, and discount options for particular case types.

**Summary of Factual Data and Analytical Methodologies**

None

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

The rule will require individuals who are represented in felony diversion cases to pay \$240 toward the cost of their representation, which is lower than for other felony cases. Clients also have the option to pay a lower discount amount of \$60 as provided in PD § 6.02(1). As this rule would impact only individual clients of the SPD, there is no anticipated economic impact of implementing the rule.

**Effect on Small Business**

None

**Agency Contact Person**

Devon Lee, [leede@opd.wi.gov](mailto:leede@opd.wi.gov) or (608) 261-0633  
Office of the State Public Defender  
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**Place to Submit Comments**

Comments may be submitted to Devon Lee at [leede@opd.wi.gov](mailto:leede@opd.wi.gov), or 315 N. Henry Street, 2<sup>nd</sup> Floor, Madison, WI 53703

**Text of Proposed Rule**

SECTION 1:

PD 3.02(1) is amended to read:

PD 3.02 Cost of retained counsel. The anticipated cost of retaining counsel shall be determined by this schedule:

1 <sup>st</sup> degree intentional homicide	\$17,500
Appellate category I	\$9,000
Appellate category II	\$4,500
Other class A/B/C felony	\$5,000
Ch. 980 Original petition	\$6,000
Ch. 980 Post-commitment	\$3,000
Involuntary TPR	\$4,500
Other felony	\$2,200
<u>Felony diversion</u>	<u>\$1,500</u>
Felony delinquency	\$1,500
Revocation	\$1,400
Chapter 55	\$1,200

Paternity	\$1,000
Misdemeanor	\$750
Traffic misdemeanor	\$750
Special proceedings	\$750
Other juvenile	\$600
Chapter 51	\$600

SECTION 2.

PD 6.01 is amended to read:

PD 6.01 Payment for legal representation. Except as provided in ss. 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 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	Revocation	\$240
Chapter 980 Proceedings	\$1200	Juvenile Felony/Termination of Parental Rights	\$480
Other Felony	\$480	Other Juvenile	\$240
<u>Felony Diversion</u>	<u>\$240</u>		
Commitment (Chapter 51)	\$120	Special Proceeding	\$120
Chapter 55	\$480	Paternity	\$240
Appellate/Category I	\$1200	Appellate/Category II	\$480

SECTION 3.

PD 6.02(1) is amended to read:

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

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$600	Misdemeanor	\$60
Other Class A or B Felony	\$120	Revocation	\$60
Chapter 980 Proceedings	\$120	Termination of Parental Rights	\$60
Other Felony	\$60	Special Proceeding	\$30
<u>Felony Diversion</u>	<u>\$60</u>	Paternity	\$30
Appellate I	\$120	Appellate II	\$60

SECTION 4: EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.