



Wisconsin State Public Defender

315 N. Henry St. - 2nd Floor
PO Box 7923 Madison, WI 53707-7923
Office Number: 608-266-0087 / Fax Number: 608-267-0584
www.wisspd.org

Nicholas L. Chiarkas
State Public Defender

Kelli S. Thompson
Deputy State Public
Defender

CR 09-067

**ORDER OF THE STATE OF WISCONSIN
OFFICE OF THE STATE PUBLIC DEFENDER
ADOPTING RULES
(Wis. Admin. Code Chapter PD 1 Certification)**

The Wisconsin State Public Defender Board proposes an order to repeal PD 1.05 (1) and PD 1.06, to renumber and amend PD 1.03, to amend PD 1.03 (title), PD 1.05 (2), (3), and (6), PD 1.07 and PD 1.08, to repeal and recreate PD 1.035 and PD 1.04, and to create PD 1.03 (2), PD 1.03 (3), PD 1.03 (4), PD 1.03 (5), PD 1.037 and PD 1.075, relating to the certification of private bar attorneys to accept appointments to provide legal representation for state public defender clients.

Statutes Interpreted

Sections 977.02 (5) and (6), 977.03 (3), 977.05 (4) and (5), and 977.08 (1) to (3), Stats.

Statutory Authority

Sections 977.02 (5), (6) and (8), and 977.03 (3), Stats.

Explanation of Agency Authority

Sections 977.05 (4) and (5) and 977.08 (1) require the state public defender to appoint attorneys to represent indigent clients in specified cases. Section 977.08 (2) and (3) require the state public defender to notify all attorneys that they may be appointed to provide legal representation to state public defender clients, to review the qualifications of attorneys seeking appointment, and to certify lists of attorneys qualified to accept appointments. Section 977.02 (5) allows the state public defender board to promulgate rules that establish procedures to assure that the legal representation of indigent clients by the private bar at the initial stages of cases assigned under ch. 977 is at the same level as the representation provided by the state public defender. Section 977.02 (6) allows the state public defender board to establish rules to accommodate the handling of certain potential conflict of interest cases by the office of the state public defender. Section 977.03 (3) allows the state public defender board to promulgate rules to establish procedures under which the state public defender may appoint attorneys based upon the state public defender's evaluation of the attorneys' performance. Section 977.02 (8) allows the state public defender board to perform all other duties necessary and incidental to the performance of any duty enumerated in ch. 977, Stats.

Related Statute or Rule

None

Plain Language Analysis

The ethical rules in Supreme Court Rules Chap. 20, Rules of Professional Conduct for Attorneys, prohibit conflicts of interest and require zealous representation. Consequently, the state public defender appoints some cases to private attorneys who are not employees. Because the state public defender does not have direct oversight of the legal representation provided in these cases, the state public defender uses other means, including certification lists, to ensure that the private attorneys are competent to represent clients in different types of cases.

These rules modify certification criteria and procedures to:

- Update the certification lists to reflect changes in substantive and procedural law.
- Permit the state public defender to exercise discretion to certify, recertify, sanction, suspend, caution, place conditions upon or decertify a private attorney for cause.
- Establish criteria for the exercise of discretion.
- Permit the state public defender to consider an attorney's prior disciplinary record and other conduct, in addition to experience and education, when making certification decisions.
- Require an attorney to reapply for certification after decertification or voluntary removal from any certification list.
- Permit the state public defender to require a period of provisional certification to allow the state public defender to monitor the representation provided to clients.
- Permit the state public defender to suspend case appointments to an attorney pending an investigation into performance or billing.
- Permit the state public defender to disclose information about an investigation after the investigation is concluded.

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

Illinois

Appointment: Appeals are appointed by the appellate court to the State Appellate Defender. Trial court judges appoint the local public defender office.

Certification/Standards for Private Attorneys: Appellate cases: An attorney licensed to practice law in Illinois who has prior criminal appellate experience or an attorney who is a member or employee of a law firm which has at least one member with that experience may submit a bid to the State Appellate Defender to receive cases. Prospective bidders must furnish legal writing samples that are deemed acceptable to the State Appellate Defender. Trial cases: No written qualifications and standards or on-going legal education requirements were found.

Iowa

Appointment: Appellate courts appoint the State Appellate Defender. At the trial court level, the State Public Defender files a notice with a district court clerk in each county served by the public defender designating which local public defender office shall receive

notice of appointment of cases. This designee shall be appointed by the court to represent all the eligible indigents in all of the cases and proceedings specified in the designation. The State Public Defender may notify the trial court that the public defender designee will not provide legal representation in certain cases. The State Public Defender may contract with private attorneys and nonprofit organizations for the provision of legal services to indigent persons.

Certification/Standards for Private Attorneys: The State Public Defender may confer with judges, attorneys and others having knowledge about the attorney's competence, effectiveness, trustworthiness and ability to provide services. Also, the State Public Defender may conduct additional investigation as deemed warranted. The information received may be considered when deciding to award an initial contract or renew a contract for legal services with a private attorney.

Michigan

Appointment: Appellate courts determine eligibility and appoint the State Appellate Defender Office to cases. The trial courts determine eligibility and appoint local public defense agencies to represent the indigent.

Certification/Standards for Private Attorneys: The State Appellate Defender Office has initial qualification requirements and on-going training requirements. The trial courts vary by county as to qualifications and on-going training requirements. For example, Wayne County (Detroit) appoints the Legal Aid and Defender of Detroit and does not appear to have published qualification standards or on-going training requirements for private attorneys who wish to be appointed to public defender cases. Oakland County (Pontiac) inquires about criminal law experience and education and requests the names of judges and attorneys for references as part of the initial qualification. Also, Oakland County requires private attorneys to agree to attend on-going training related to criminal law. Macomb County (Mt. Clemons) has an Indigent Assignment List Selection Committee that reviews attorney applications and assigns attorneys to a level. An attorney must apply to this Committee to move to a higher level. Also, Macomb County requires annual training of one continuing legal education credit or three mini-seminars relating to criminal law.

Minnesota

Appointment: The trial and appellate courts appoint cases. The trial court judge appoints the district public defenders' offices in the jurisdiction in which the charge is filed. There are ten judicial districts in Minnesota. The district public defender cannot be required to make the eligibility determination or investigate the availability of assets. If a conflict of interest or other situation exists, the court can appoint to private attorneys who have contracts for appointments with the district public defender's office.

Certification/Standards for Private Attorneys: The Chief Public Defender in each of the districts reviews the qualifications of a private attorney who applies for a contract to accept appointments of public defender cases. There are no published standards for that review.

Summary of Factual Data and Analytical Methodologies

None

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

None

Effect on Small Business

None

Agency Contact Person

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

Place to Submit Comments

Comments may be submitted to Marla Stephens at stephensm@opd.wi.gov or 315 N. Henry Street, 2nd Floor, Madison, WI 53703.

SECTION 1. PD 1.03 (title) is amended to read:

PD 1.03 Certification application and decisions.

SECTION 2. PD 1.03 is renumbered and amended to read:

PD 1.03 (text) **(1) APPLICATION FORM.** The state public defender shall prepare an application form¹ to be completed by attorneys seeking certification or recertification as provided in s. 977.08 (3), Stats. The state public defender shall notify in writing each attorney who has submitted an application of the county or counties and the cases for which the attorney is certified to accept appointments, if any.

SECTION 3. PD 1.03 (2), 1.03 (3), 1.03 (4) and 1.03 (5) are created to read:

PD 1.03 **(2) PUBLIC DEFENDER'S CERTIFICATION DECISION.** (a) For cause, the state public defender may take any of the following actions regarding an attorney's certification status:

1. Deny an application for certification or recertification.
2. Return an attorney to provisional certification under s. PD 1.037.
3. Exclude an attorney from any certification list in s. PD 1.04.
4. Suspend an attorney's certification status under sub. (3).
5. Decertify an attorney under sub. (4).
6. Caution an attorney.
7. Impose conditions upon an attorney's continued certification.
8. Take any other action that is consistent with the best interests of clients, the interests of justice, or the interests of the state public defender.

¹ Certification application forms and information are available on the public defender website, www.wisspd.org, or from the Assigned Counsel Division, Office of the State Public Defender, P.O. Box 7923, Madison, WI 53707-7923, phone 608-266-0087. The link to the current certification application is: <http://www.wisspd.org/html/acd/certform.pdf>. Copies of five proposed certification application and request forms are attached.

(b) The state public defender shall inform the attorney in writing of the reasons for the adverse certification decision and the manner by which the attorney may appeal the decision.

PD 1.03 (3) **SUSPENSION.** (a) The state public defender may suspend the attorney from any or all of the certification lists in s. PD 1.04 under any of the following circumstances:

1. Pending the outcome of the investigation into the attorney's performance; an allegation of fraudulent, unreasonable or inaccurate billing practices or other misconduct; or of failure to comply with any provision of this chapter.
2. In response to a request for decertification.

(b) The suspension under par. (a) may not exceed 120 days, exclusive of any time attributable to the lack of cooperation from the attorney under investigation. The state public defender may extend the suspension by a period not to exceed an additional 30 days in order to complete the investigation. Suspensions that exceed these time limits may be appealed under s. PD 1.05.

PD 1.03 (4) **DECERTIFICATION.** Any interested party 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 and exclude the attorney from any or all of the certification lists in s. PD 1.04. An attorney seeking reinstatement to a certification list following decertification shall submit an application as provided in sub. (1).

PD 1.03 (5) **DISCRETIONARY CONSIDERATIONS.** The state public defender's exercise of discretion and determination whether cause exists to take any action under this chapter may include consideration of any of the following factors:

(a) In this or any other jurisdiction, the attorney is or has been disbarred, has or has had his or her license to practice law suspended, or has surrendered his or her license to practice law.

(b) The attorney fails or has failed to meet the education or experience requirements under this chapter.

(c) The attorney's conduct while employed by the state public defender, another law office or another governmental agency in Wisconsin or in another jurisdiction raises a concern about the attorney's character, performance, ability or behavior.

(d) The attorney engages or has engaged in fraudulent, unreasonable or inaccurate billing to the state public defender or any other governmental agency or organization.

(e) The attorney fails or has failed to meet minimum attorney performance standards adopted by the state public defender or to comply with the supreme court rules of professional conduct for attorneys.

(f) The attorney fails or has failed to follow the state public defender's procedures for billing or for approval of expenses.

(g) The attorney is or has been the subject of a formal complaint filed by the office of lawyer regulation with the supreme court or filed with an organization that is responsible for enforcement of lawyer regulation in any other jurisdiction.

(h) The attorney is or has been the subject of a finding of dishonesty or incapacity by the client protection fund in an award to a claimant.

(i) The attorney is convicted of any crime that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer.

(j) The attorney engages in conduct contrary to the interests of clients, the interests of justice, or the interests of the state public defender.

(k) The attorney is barred by statute from engaging in criminal or other public defender case representation.

(L) The attorney fails or has failed to cooperate with an investigation under this chapter.

(m) The conduct of an attorney that formed the basis for voluntary removal or for an investigation or decision regarding the attorney's license to practice law, certification to accept appointments, or billing practices, in Wisconsin or in any other jurisdiction continues to raise a concern about the attorney's character, performance, ability or behavior.

(n) The attorney requests to be removed from any or all certification lists at a time when the attorney is the subject of a pending inquiry or investigation concerning performance or billing practices.

(o) The attorney fails to comply with this chapter.

(p) The state public defender learns of any other information that raises a concern about the attorney's character, performance, ability or behavior.

SECTION 4. PD 1.035 is repealed and recreated to read:

PD 1.035 Requirements for certification. In order to obtain and retain certification under this chapter, an attorney shall satisfy all of the following requirements:

(1) APPLICATION. The attorney shall submit an application under s. PD 1.03 (1).

(2) LICENSE TO PRACTICE. The attorney shall be licensed to practice law in Wisconsin and shall be a member in good standing of the State Bar of Wisconsin.

(3) RESIDENCE. (a) The attorney shall reside in or maintain his or her principal office in Wisconsin. A post office box in Wisconsin does not constitute a residence or a principal office in Wisconsin.

(b) An attorney may be certified for trial division cases in only those counties in which he or she resides or maintains his or her principal office, except that in counties with less than ten 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.

(c) Notwithstanding par. (a) and (b), 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. Relevant considerations include, but are not limited to, caseload, availability of other counsel, proximity to the court, and cost-effectiveness.

(4) CONTINUING LEGAL EDUCATION. (a) The attorney shall complete six credits of continuing legal education each calendar year in courses approved by the state public defender. This requirement shall apply beginning in the first full calendar year following an attorney's graduation from law school.

(b) The attorney shall report compliance with par. (a) under the procedures established by the state public defender. The state public defender shall calculate continuing education credits in the same manner as the board of bar examiners.

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

PD 1.035 **(5) COOPERATION WITH INQUIRIES.** (a) An attorney shall cooperate with inquiries from the state public defender regarding the status of appointed cases, and regarding performance or billing in appointed cases.

(b) An attorney who receives a written request to provide a response shall respond in writing and within the deadlines presented with the request. An attorney who fails to do so may be suspended from further appointments under s. PD 1.03 (3) until an adequate response is provided.

SECTION 5. PD 1.037 is created to read:

PD 1.037 Provisional certification. (1) APPLICABILITY. The state public defender may provisionally certify an attorney. All attorneys who have not been previously certified and all attorneys whose certification status is reinstated shall be provisionally certified under this section.

(2) REVIEW. (a) After one year of provisional certification, the state public defender shall review the attorney's performance and determine the attorney's future certification status. The public defender may continue provisional certification, grant non-provisional certification, or discontinue provisional certification and exclude the attorney from any or all certification lists.

(b) The state public defender may require a provisionally certified attorney to provide a letter from at least one judge supporting non-provisional certification.

(c) The state public defender's determination may be based upon, but is not limited to: a review of briefs and client files; billing records; client communications; court records; telephone or personal conferences; and recommendations of judges and attorneys.

(d) The state public defender's determination shall consider the extent to which the provisionally certified attorney has satisfied the supreme court rules of professional conduct for attorneys and the minimum attorney performance standards adopted by the state public defender.

(3) CONTINUATION. If provisional certification is continued, the attorney's performance shall be reviewed again under sub. (2) after a period of time set by the state public defender, not to exceed one year.

(4) APPEAL. An attorney may appeal the state public defender's decision to discontinue provisional certification and to exclude the attorney from any or all certification lists as provided in s. PD 1.05.

(5) PROVISIONAL CERTIFICATION IN LIEU OF DECERTIFICATION. The state public defender may change an attorney's certification status to provisional certification in lieu of pursuing decertification as provided in s. PD 1.03 (4).

SECTION 6. PD 1.04 is repealed and recreated to read:

PD 1.04 Certification lists. An attorney may be placed on the list to accept an appointment to represent state public defender clients in the following case types if the attorney requests appointments in the case type, satisfies the requirements of s. PD 1.035, and satisfies the following additional criteria:

(1) MISDEMEANORS. For misdemeanor cases, no additional criteria.

(2) PATERNITY CASES. For paternity cases, no additional criteria.

(3) FELONIES. (a) *Class G, H or I.* For a class G to I felony case, the attorney has satisfied both of the following criteria within the five years immediately preceding the application for certification:

1. Been trial counsel, alone or with other trial counsel.
2. Has litigated a significant portion of one completed jury trial, two trials to a court of record, or four testimonial hearings before a court of record, but not including a proceeding to revoke probation, parole or extended supervision.

(b) *Class D, E and F.* For a class D to F felony case, the attorney has satisfied either of the following criteria within the five years immediately preceding the application for certification:

1. Been sole trial counsel in at least one felony case tried to a jury to final resolution.
2. Been trial counsel, alone or with another attorney, and litigated a significant portion of three civil or criminal cases tried to a jury to final resolution.

(c) *Class B and C.* For a class B or C felony case, the attorney has been sole trial counsel in at least four cases tried to a jury to final resolution, at least one of which was a felony, within the five years immediately preceding the application for certification.

(d) *Class A.* For a class A felony case, the attorney has satisfied all of the following criteria:

1. The attorney maintained a significant portion of his or her practice in criminal law within the five years immediately preceding the application for certification.

2. The attorney has been sole or lead trial counsel in at least two class A to D felony cases tried to a jury to final resolution within the five years immediately preceding the application for certification.

3. The attorney submitted to peer review, including reference checks with other criminal defense attorneys, prosecutors, judges and public defender staff.

4. The attorney has submitted a writing sample, consisting of a court memorandum or brief concerning criminal law issues that was written within the two years immediately preceding the application for certification, which was reviewed and approved by the state public defender.

5. The attorney has submitted any requested information relevant to a determination of the attorney's qualifications.

(4) UNCLASSIFIED CRIMES. For a case alleging an unclassified crime, the attorney satisfies the certification criteria for the case type with a corresponding maximum penalty.

PD 1.04 **(5) WRITS AND EXTRADITIONS.** For a writ or extradition case, the attorney satisfies the certification criteria for the case type alleged in the extradition request or that is the subject of the writ.

PD 1.04 **(6) CHAPTER 980 SEXUALLY VIOLENT PERSON COMMITMENTS.** For a case filed under ch. 980, Stats., the attorney has been sole trial counsel in at least four cases tried to a jury to final resolution, at least one of which was a felony, within the five years immediately preceding the application for certification.

PD 1.04 **(7) CHILDREN'S AND JUVENILE COURT CASES ALLEGING BEHAVIOR THAT COULD BE PROSECUTED AS A MISDEMEANOR.** For a case filed under ch. 48 or 938, Stats., alleging behavior that could be prosecuted as a misdemeanor in criminal court, the attorney has satisfied either of the following criteria:

(a) Completed four credits of state public defender approved legal education in ch. 48 or 938, Stats., cases.

(b) Agreed in writing to complete four credits of state public defender approved legal education in ch. 48 or 938, Stats., cases during the first year of his or her provisional certification under s. PD 1.037.

PD 1.04 **(8) JUVENILE COURT OR JUVENILE WAIVER CASES ALLEGING BEHAVIOR THAT COULD BE PROSECUTED AS A CLASS E TO I FELONY.** For a case filed under ch. 938 in which the most serious allegation could be a class E to I felony if prosecuted in criminal court, or

a case seeking to waive a juvenile into criminal court for behavior that could be a class E to I felony in criminal court, the attorney has satisfied the criteria in sub. (3) (a) and is certified for cases under sub. (7).

PD 1.04 (9) JUVENILE COURT OR JUVENILE WAIVER CASES ALLEGING BEHAVIOR THAT COULD BE PROSECUTED AS A CLASS B TO D FELONY. For a case filed under ch. 938 in which the most serious allegation could be a class B to D felony if prosecuted in criminal court, or a case seeking to waive a juvenile into criminal court for behavior that could be a class B to D felony in criminal court, the attorney has satisfied the criteria in sub. (3) (b) and has been sole trial counsel in at least three trials to the court in ch. 938, Stats., cases in which the most serious allegation would be a felony if prosecuted in criminal court.

PD 1.04 (10) TERMINATION OF PARENTAL RIGHTS CASES. For a termination of parental rights case under ch. 48, Stats., the attorney has satisfied all of the following criteria:

(a) Satisfied the criteria in sub. (3) (a).

(b) Completed four credits of state public defender approved legal education pertaining to ch. 48, Stats., cases.

(c) Completed four credits of state public defender approved legal education pertaining to termination of parental rights cases.

PD 1.04 (11) CHAPTER 51 OR 55 COMMITMENT CASES. For a case that is filed under ch. 51 or 55, Stats., the attorney has satisfied either of the following criteria:

(a) Completed two credits of state public defender approved legal education pertaining to ch. 51 or 55, Stats., cases.

(b) Agreed in writing to complete two credits of state public defender approved legal education pertaining to ch. 51 or 55, Stats., cases during the first year of his or her provisional certification under s. PD 1.037.

PD 1.04 (12) REVOCATION OF PROBATION, PAROLE OR EXTENDED SUPERVISION STATUS. (a) For a proceeding to revoke probation, parole or extended supervision in which the offense of conviction was a misdemeanor, the attorney has satisfied either of the following criteria:

1. Completed two credits of state public defender approved legal education pertaining to revocation cases.

2. Agreed in writing to complete two credits of state public defender approved legal education pertaining to revocation cases during the first year of his or her provisional certification under s. PD 1.037.

(b) For a proceeding to revoke probation, parole or extended supervision in which the offense of conviction was a felony, the attorney has satisfied both of the following criteria:

1. Satisfied the criteria of sub. (3) (a).

2. Completed two credits of state public defender approved legal education pertaining to revocation cases.

PD 1.04 (13) APPELLATE DIVISION CASES. (a) *Level one appellate certification.* Level one appellate case certification includes appellate appointments in misdemeanor cases, unclassified crimes, sentencing after revocation cases, paternity cases and class G to I felony cases. For an appeal of a level one appellate case, the attorney has satisfied either of the following criteria:

1. Submitted a brief-in-chief that was filed in any appellate court in the United States within the five years immediately preceding the application for certification and that was reviewed and approved by the state public defender.

2. Completed three credits of state public defender approved legal education pertaining to appellate procedure, or its equivalent, including a law school course, clinical program or judicial clerkship, within one year immediately preceding the application for certification.

(b) *Level two appellate certification.* Level two appellate case certification includes appellate appointments in level one cases and in class A to F felony cases. For an appeal of a level two appellate case, the attorney has satisfied all of the following criteria:

1. Filed two briefs-in-chief in Wisconsin appellate courts that complied with s. 809.30, Stats., within the five years immediately preceding the application for certification.

2. Submitted one brief-in-chief that satisfied the criteria in subd. 1 and that was reviewed and approved by the state public defender.

3. Conducted three contested circuit court hearings, including one evidentiary hearing, within the five years immediately preceding the application for certification.

4. Either has satisfied the criteria of subd. (a) 2., or completed six credits of state public defender approved legal education pertaining to criminal law within one year immediately preceding the application for certification.

(c) *Termination of parental rights appellate certification.* For an appeal of a termination of parental rights case under ch. 48, Stats., the attorney has satisfied both of the following criteria:

1. Satisfied the criteria of par. (a).

2. Either has completed four credits of state public defender approved legal education pertaining to termination of parental rights cases within one year immediately preceding the application for certification, or has been sole trial or appellate counsel of record in one contested termination of parental rights case within the three years immediately preceding the application for certification.

(d) *Juvenile appellate certification.* For an appeal of a case prosecuted under ch. 48 or 938, other than a termination of parental rights case, the attorney has satisfied both of the following criteria:

1. Satisfied the criteria of par. (a).

2. Either has completed four credits of state public defender approved legal education pertaining to chs. 48 or 938, Stats., within one year immediately preceding the application for certification; or has been sole trial or appellate counsel of record in five

cases filed under ch. 48 or 938, Stats., within the three years immediately preceding application for certification.

(e) *Civil commitment appellate certification.* For an appeal of a case filed under ch. 51 or 55, Stats., the attorney has satisfied both of the following criteria:

1. Satisfied the criteria of par. (a).
2. Either completed four credits of state public defender approved legal education pertaining to ch. 51 or 55, Stats., within one year immediately preceding the application for certification; or has been sole trial or appellate counsel of record in five cases under ch. 51 or 55, Stats., within the three years immediately preceding the application for certification.

(f) *Chapter 980 appellate certification.* For an appeal of a case filed under ch. 980, Stats., the attorney has satisfied both of the following criteria:

1. Satisfied the criteria of par. (a).
2. Either completed four credits of state public defender approved legal education pertaining to ch. 980, Stats., within one year immediately preceding the application for certification; or has been sole trial or appellate counsel of record in one contested commitment under ch. 980, Stats., within the three years immediately preceding the application for certification.

PD 1.04 (14) OTHER SPECIALIZED CERTIFICATION LISTS. The state public defender may develop other specialized lists under this section in response to changes in substantive or procedural law or developments in forensic science.

PD 1.04 (15) PUBLIC DEFENDER'S AUTHORITY TO WAIVE CRITERIA. The state public defender may allow an attorney's education, training or experience to substitute for any requirement set forth in s. PD 1.035 or this section. The state public defender may waive the requirements in this section to assign a case to an attorney who has a prior pending case with the same client.

SECTION 7. PD 1.05 (1) is repealed.

SECTION 8. PD 1.05 (2), (3), and (6) are amended to read:

PD 1.05 Appeal of certification decisions.

(2) Any attorney may appeal the state public defender's certification decision under s. PD 1.03 (2) by mailing a letter of appeal to the state public defender within 30 days of the notice of ~~exclusion~~ the decision. The attorney shall state in the letter the certification from which the attorney has been excluded or the decision from which the attorney intends to appeal. The letter ~~may also~~ shall state the reasons why the attorney believes the ~~exclusion decision~~ decision 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~~ before the hearing, inform the attorney of the time and place of the board meeting at which the appeal will be considered.

(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 or reversing~~ or modifying the decision of the state public defender. The written decision shall be mailed to the attorney within 20 days ~~of~~ after the board meeting and shall be signed by an officer of the board.

SECTION 9. PD 1.06 is repealed.

SECTION 10. PD 1.07 is amended to read:

PD 1.07 Voluntary removal. Any attorney may request to be removed from any ~~certified certification~~ 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.~~ An attorney seeking reinstatement to a certification list after voluntary removal shall submit an application as provided in s. PD 1.03 (1).

SECTION 11. PD 1.075 is created to read:

PD 1.075 Inactive status. (1) An attorney may decline to accept appointments and request in writing to be placed in inactive status. If an attorney has not been appointed in a case for more than one year, the state public defender may place the attorney in inactive status and shall notify the attorney of the change. Except as provided in sub. (2), the state public defender shall return the attorney to active status upon request.

(2) If an attorney has been in inactive status for more than 2 years, and seeks reinstatement to active status, the attorney shall submit an application as provided in s. PD 1.03 (1).

SECTION 12. PD 1.08 is amended to read:

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~~ the contents or substance of any review or investigation prior to issuing a decision under s. PD 1.03, unless ordered to do so by the chairperson of the public defender board or a court, or unless the attorney who is the subject of the review or investigation first discloses the contents or the substance of the review or investigation.

PD 1.08 (2) Only ~~certified~~ certification lists, board proceedings and decisions under this chapter shall be considered public documents and open to public inspection.

SECTION 13. Initial Applicability.

These rules shall first apply to applications for certification received and to decisions of the state public defender made on or after the effective date.

SECTION 14. Effective Date.

This rule shall take effect on July 1, 2010, as provided in s. 227.22 (2) (a), Stats.

Dated: June 26, 2009

Wisconsin State Public Defender Board

By: _____
DANIEL M. BERKOS, Chair

Clearinghouse Rule 09-067