

STATE OF WISCONSIN

OFFICE OF THE STATE PUBLIC DEFENDER

I, Daniel M. Berkos, Chair of the State Public Defender Board and custodian of the official records, certify that the annexed rules related to the determination of clients' ability to pay attorney fees, referral of uncollected accounts to the department of administration, and written notification to clients of their obligation to pay attorney fees were duly approved and adopted by this board on November 10, 1995.

I certify that this copy has been compared by me with the original on file in this Office and that the same is a true copy thereof, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 1st day of March 1996.



DANIEL M. BERKOS, Chair  
State Public Defender Board

Filed 3/4/96  
8:15am

4-1-96

The Wisconsin state public defender board proposes an order to create PD 6.015, PD 6.025, PD 6.06, PD 6.07, and PD 6.08 related to determining clients' ability to pay for the cost of legal representation, referring uncollected accounts to the department of administration for collections and requiring the agency to provide written notice to clients of their repayment obligation.

## **ANALYSIS**

The proposed rules comply with ss. 977.02 (4m) and (4r), 977.06 (1) (d) and (3) (a), 977.07 (2m), 977.075, and 977.076, Stats., created by 1995 Wisconsin Act 27. Act 27 requires the agency to collect for the cost of representation from persons who are partially indigent or who have otherwise been determined to be able to reimburse the agency for the cost of representation. In addition, the budget bill authorizes the department of administration to collect unpaid reimbursement payments owed to the state public defender.

The proposed rules also implement recommendations made by the Legislative Audit Bureau (LAB) in its 1994 audit of the agency. Specifically, the rules implement LAB's recommendations, found on page 30 of the report, that the agency undertake aggressive collections efforts and, as part of that effort, determine whether clients have the ability to pay for the cost of legal representation.

The proposed rules establish the procedures for: 1) determining clients' ability to pay; 2) referring uncollected accounts to the department of administration for collection; and, 3) providing written notice to clients of the repayment obligation for the cost of legal representation.

Statutory authority: ss. 977.02 (4m) and (4r), Stats.

Statutes interpreted: ss. 977.06 (1) (d) and (3) (a), 977.07 (2m), 977.075, and 977.076, Stats.

PD 6.015 is created to read:

### **PD 6.015 Written notice of repayment obligation.**

(1) The state public defender shall provide the following information in writing to all persons subject to repayment of attorney costs under s. 977.075, Stats:

- (a) The optional prepayment amount.
- (b) The maximum amount the person may be required to pay under the applicable fee schedule.
- (c) The schedule for periodic payments if the person does not pay the optional

prepayment 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 6.025 is created to read:

**PD 6.025 Determination of ability to pay.**

- (1) The state public defender shall determine whether persons subject to repayment of attorney costs 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., Stats., 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 amount specified in s. 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 be indigent in part.
  - (b) 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.
  - (c) The person does not notify the state public defender by the date specified in the notice sent to them under s. PD 6.015 that they are unable to pay the specified periodic payments.
  - (d) 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 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.

PD 6.06 is created to read:

**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 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 is created to read:

**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 is created to read:

**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. 48.275(2), 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.

This rule shall take effect on the first day of the month commencing after the date of publication, pursuant to s. 227.22 (2)(intro.), Stats.

Dated: 2/29/96

Wisconsin State Public Defender Board

By: Daniel M. Berkos  
DANIEL M. BERKOS, Chair  
State Public Defender Board