



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 the certification of private attorneys for appellate cases and to the certification equivalent for staff attorneys were duly approved and adopted by this board on October 20, 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*

DANIEL M. BERKOS, Chair  
State Public Defender Board

## **PROPOSED ORDER OF THE STATE PUBLIC DEFENDER CREATING A RULE**

The Wisconsin state public defender board proposes an order to repeal and recreate PD 1.04 (5) and to repeal PD 1.04 (7) relating to the certification of private attorneys for appellate cases and to the certification equivalent for staff attorneys.

### **Analysis**

The proposed rule implements the recommendation of the Legislative Audit Bureau that the state public defender modify appellate certification requirements. The proposed rule establishes three levels of certification and specialty certification and includes provisional certification and review of private attorneys' case briefs. The different levels will allow the director of the appellate division to review the work of a private attorney before approving certification to the next highest level. The state public defender will ensure that the legal education required for certification is offered to private attorneys by the agency.

The extensive mentoring and training programs that exist within the agency for staff attorneys obviates the need for the requirement that staff attorneys meet criteria equivalent to certification. Daily supervision, mentoring and internal training meet and generally exceed certification requirements.

Statutory authority: s. 977.02 (5), Stats.

Statute interpreted: s. 977.08, Stats.

### **Section 1.**

PD 1.04 (5) is repealed and recreated to read:

PD 1.04 (5) (a) Certification for appellate cases in general. An attorney shall be certified for appellate cases if he or she meets all of the following requirements:

1. The attorney has requested certification.
2. The attorney is licensed in good standing to practice law in this state.
3. The attorney meets the applicable qualifications in pars. (c) to (f).

(b) Power of appellate division director. Notwithstanding pars. (c) to (f), the director of the appellate division may determine whether an attorney's education or experience may be substituted for compliance with the qualifications under pars. (c) to (f) and may deny certification for good cause.

(c) Level one. Level one certification means the attorney is certified for

misdemeanor cases, sentencings after revocation of probation or parole and any pleas to class E felonies. An attorney is qualified for certification at this level if the attorney has done either of the following:

1. Filed one brief-in-chief in any United States appellate court in the 5 years immediately preceding application for certification. A copy of the brief must accompany the application for certification.

2. Completed 3 credits of state public defender approved legal education on appellate procedure, or its equivalent, including a law school course, clinical program or judicial clerkship, in the 3 years immediately preceding application for certification.

(d) Level Two. Level two certification means the attorney is certified for level one cases and cases involving any pleas to class B, C, or D felonies, and trials in which the defendant was convicted of a class C, D, or E felony. An attorney is qualified for certification at this level if the attorney has done all of the following:

1. Filed a minimum of two briefs-in-chief in Wisconsin appellate courts that complied with s. 809.30 or 809.40, Stats., in the 5 years immediately preceding application for certification. A copy of one of the briefs must accompany the application for certification.

2. Conducted a minimum of 3 contested trial court hearings, including one evidentiary hearing, in the 5 years immediately preceding application for certification.

3. Met the criteria of sub. (2) (c) or attended 6 hours of state public defender approved legal education in criminal law within one year immediately preceding application for certification.

(e) Level three. Level three certification means the attorney is certified for level two cases, cases involving any pleas to class A felonies and trials in which the defendant was convicted of a class A or B felony. An attorney is qualified for certification at this level if the attorney has done all of the following:

1. Filed a minimum of 3 briefs-in-chief in the Wisconsin Supreme Court or the Wisconsin Court of Appeals that complied with s. 809.30 or 809.40, Stats., in the 5 years immediately preceding application for certification. At least one of the briefs must have been in a felony jury trial case and this brief must accompany the application for certification.

2. Conducted a minimum of 3 evidentiary hearings in criminal cases, one of which must have been a trial or postconviction hearing, in the 5 years immediately preceding application for certification.

3. Met the criteria of sub. (2) (c) or attended 6 hours of state public defender approved legal education in criminal law in the year immediately preceding application for certification.

(f) Specialized areas of certification. Specialized areas of certification include any of the following:

1. Termination of parental rights cases. An attorney is qualified for certification in termination of parental rights cases if the attorney meets the criteria of par. (c), and:

a. Has completed 4 credits of state public defender approved legal education in termination of parental rights cases in the year immediately preceding application for certification; or

b. Has been sole trial or appellate counsel of record in at least one contested termination of parental rights case in the 3 years immediately preceding application for certification.

2. Other juvenile cases under ch. 48 and 938, Stats. An attorney is qualified for certification in other juvenile cases under ch. 48 and 938, Stats., if the attorney meets the criteria of par. (a) 3, and:

a. Has been sole trial counsel of record in at least 5 completed juvenile cases in the 3 years immediately preceding application for certification; or

b. Has completed 4 credits of state public defender approved legal education in cases under ch. 48 and 938, Stats., in the year immediately preceding application for certification.

3. Cases under ch. 51 and 55, Stats. An attorney is qualified for certification in cases under ch. 51 and 55, Stats., if the attorney meets the criteria of par. (a) 3, and:

a. Has been sole trial counsel of record in 5 cases under ch. 51 and 55, Stats., in the 3 years immediately preceding application for certification; or

b. Has completed 2 credits of state public defender approved legal education in cases under ch. 51 and 55, Stats., in the 3 years immediately preceding application for certification.

4. Cases under ch. 980, Stats. An attorney is qualified for certification in cases under ch. 980, Stats., if the attorney meets the criteria of par. (c), and:

a. Has completed a minimum of 2 credits of state public defender approved education in cases under ch. 980, Stats., in the year immediately preceding

application for certification; or

b. Has been sole trial or appellate counsel of record in at least one contested commitment under ch. 980, Stats., in the 3 years immediately preceding application for certification.

**Section 2.**

PD 1.04 (7) is repealed.

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