

Clearinghouse Rule 97-031

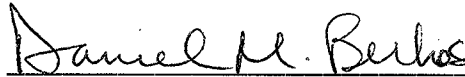
STATE OF WISCONSIN

OFFICE OF THE STATE PUBLIC DEFENDER

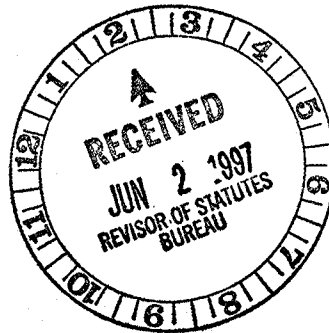
I, Daniel M. Berkos, Chair of the State Public Defender Board and custodian of the official records, certify that the annexed rules related to the certification of private bar attorneys were duly approved and adopted by this board on February 21, 1997.

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 2nd day of June 1997.



DANIEL M. BERKOS, Chair
State Public Defender Board



97-031

8-1-97

PROPOSED ORDER OF THE STATE PUBLIC DEFENDER CREATING A RULE

The Wisconsin state public defender board proposes an order to amend PD 1.05 (5), to repeal and recreate PD 1.06, and to create PD 1.035 and 1.05 (8), relating to the certification of private bar attorneys.

Analysis:

The proposed rules make various changes to rules in chapter PD 1, Wis. Adm. Code, which relates to the certification of private bar attorneys.

First, the proposed amendment to PD 1.05 (5) allows an attorney to submit any material he or she believes is relevant to the board when appealing a certification decision. Currently, PD 1.05 (5) states that the attorney may request that the state public defender reproduce and submit to the board material relevant to the appeal. Under PD 1.05 (4), however, the state public defender is already required to submit relevant material to the board. Pursuant to ch. 227, the attorney must be allowed to submit evidence to the board, but does not have the right to require the SPD to submit additional material.

Next, PD 1.06 currently does not contain the same time limits and procedures as PD 1.05, which relates to appeal of certification decisions by the state public defender, and does not closely follow the requirements of chapter 227, Stats., as does PD 1.05. The changes to PD 1.06 make the rule consistent with PD 1.05 and follow chapter 227.

Moreover, while PD 1.05 allows the state public defender to deny certification of private bar attorneys, with appeals rights to the board, PD 1.06 currently requires that both decertification decisions and decertification appeals be heard by the board. The statutes do not require that decertification decisions be made by the board rather than the state public defender. Therefore, for consistency of policy and procedure, and in consideration of the board's other responsibilities with limited meeting time, the proposed rule allows the state public defender to make decertification decisions, with appeals to the board.

Next, PD 1.035 is being created to clarify that private bar attorneys must reside or maintain a principal office in Wisconsin in order to be certified by the SPD. The second section of the rule was previously found in PD 2.06, but it is more appropriately placed in chapter PD 1, Wis. Adm. Code, which relates to certification than in chapter PD 2, Wis. Adm. Code, which relates to the assignment procedure. The residency requirements are designed to ensure that certified attorneys are located relatively close to their assigned clients so that they are able to communicate promptly and efficiently with their clients and provide effective representation. However, the rule now specifies that exceptions to the residency requirements may be made on a case-by-case basis to help ensure effective client representation is provided. The rule also

clarifies that certification by county applies only to trial division cases.

Finally, PD 1.05 (8) is being created so that the entire board need not be present for certification appeal hearings. Proposed PD 1.05 (8) contains the same language as proposed PD 1.06 (8).

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

Statute interpreted: s. 977.08, Stats.

SECTION 1.

PD 1.035 is created to read:

PD 1.035 Residency requirements. In addition to the certification criteria listed in s. PD 1.04, the following requirements exist for certification:

(1) An attorney must reside or maintain his or her principal office in Wisconsin. A post office box in Wisconsin does not constitute a residence or principal office in Wisconsin.

(2) An attorney may be certified for trial division cases only in those counties in which he or she resides or maintains his or her principal office, except that in counties in which there are less than 10 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 for that county.

(3) Notwithstanding sub. (1) and (2), 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. Considerations include, but are not limited to, caseload, availability of other counsel, proximity to the court, and cost-effectiveness.

SECTION 2.

PD 1.05 (5) is amended to read:

PD 1.05 (5) The attorney may ~~request that the state public defender reproduce and~~ submit to the board any material that he or she believes is relevant to the appeal. The hearing before the board shall be considered a "class 3" proceeding and is governed by ~~ss. 227.44 to 227.46~~ ch. 227, Stats.

SECTION 3.

PD 1.05 (8) is created to read:

PD 1.05 (8) The board may appoint a panel of board members to conduct the hearing specified in subs. (5) and (6). After reviewing the record of the hearing and receiving the panel's recommendation, the entire board shall issue a written decision.

SECTION 4.

PD 1.06 is repealed and recreated to read:

PD 1.06 Decertification for cause. (1) Any interested party, or the assigned counsel director on his or her own motion, 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. The state public defender shall inform the attorney of the reasons for decertification and the manner by which the attorney may appeal the decision.

(2) An attorney may appeal the state public defender's decertification decision by mailing a letter of appeal to the state public defender within 30 days of the notice of decertification. The attorney shall state in the letter the reasons why the attorney believes the decertification 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 hearing, inform the attorney of the time and place of the board meeting at which the appeal will be considered.

(4) The state public defender shall transmit to the board and the attorney all material relied upon in reaching the decertification decision.

(5) The attorney may submit to the board any material that he or she believes is relevant to the appeal. The hearing before the board shall be considered a "class 3" proceeding and is governed by ch. 227, Stats.

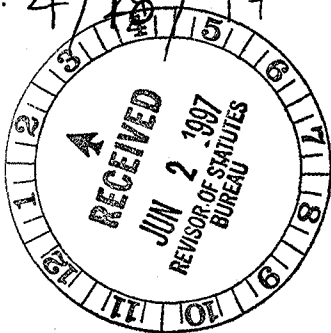
(6) The state public defender board may deliberate the matter in executive session pursuant to s. 19.85, Stats. The board shall issue a written decision either affirming or reversing the decision of the state public defender. The written decision shall be mailed to the attorney within 20 days of the board meeting and shall be signed by an officer of the board.

(7) The board's written decision constitutes findings of fact and conclusions of law within the meaning of s. 227.47, Stats.

(8) The board may appoint a panel of board members to conduct the hearing specified in subs. (5) and (6). After reviewing the record of the hearing and receiving the panel's recommendation, the entire board shall issue a written decision.

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

Dated: 4/28/97



Wisconsin State Public Defender Board

By: Daniel M. Berkos
DANIEL M. BERKOS, Chair