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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-109

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

The analysis to the rule notes that certain amendments in the rule reflect that the concept of partial indigency is no longer relevant to adult applicants for state public defender assignment of counsel. According to the analysis, prior to 1996, applicants found indigent paid nothing for services and applicants found partially indigent were required to pay some amount towards the cost of representation. After 1996, all eligible applicants have been subject to the collections program. Section 977.07 (2m), Stats., appears to support the applicability of the collections program to all eligible applicants by stating that a person found to be indigent in full or in part must be promptly informed of the state’s right to payment or recoupment. However, ch. 977, Stats., contains a number of references to the notion of partial indigency. For example, s. 977.02 (4), Stats., requires the Public Defender Board to promulgate rules regarding the determination of payments required of persons found to be indigent in part. [See also ss. 977.05 (4) (g), 977.06 (1) (d), and 977.07 (2), Stats.] If the concept of partial indigency is no longer meaningful, the state public defender should consider proposing appropriate amendments to the statutes. Finally, if the concept of partial indigency is to be abandoned, should appropriate amendments be made to ss. PD 6.025 (2) (a) and 6.05 (1) (b)?

#### 2. Form, Style and Placement in Administrative Code

a. Almost the entire rule needs to be redone using the appropriate drafting format as set forth in the “Manual.” First, the rule provisions have to be set forth in the order in which they are affected (e.g., PD 2.01 (5) is the first provision affected by the rule and should be in SECTION

1 and not in SECTION 4 as it appears in the draft). The entire rule needs to be revised to place these provisions affected in the proper order. In general, the rule should be in the following format (the following shows revision of only part of the rule to provide an example of what the format should look like, but does not show the necessary reordering of the SECTIONS and provisions affected, as referred to in the preceding sentence). It is not proper drafting form to include an entire section or subsection or other division when only part of that provision is being affected. Only the affected part needs to be shown. The following suggested format follows the rule provisions as they appear in the draft [these will have to be renumbered in the appropriate sequence]:

SECTION \_\_. PD 2.08 (3) is repealed.

SECTION \_\_. PD 3.038 (1) (b) is repealed.

SECTION \_\_. PD 3.038 (1) (c) is renumbered PD 3.038 (1) (b) and amended to read:

PD 3.038 (1) (b) if the available assets ... counsel, the person is not indigent eligible.

SECTION \_\_. PD 2.01 (5) is amended to read:

PD 2.01 (5) "County designee" means ... state public defender, to do indigency eligibility determinations pursuant to ... Stats.

SECTION \_\_. PD 2.02 (1) is amended to read:

PD 2.02 (1) In any emergency ... the person for indigency eligibility as soon as possible.

SECTION \_\_. PD 2.03 (1) and (3) are amended to read:

PD 2.03 (1) The state public ... appears to be indigent eligible ... eligibility questionnaire.

(3) The state public defender ... eligibility.

SECTION \_\_. 2.08 (title) and 2.08 (1) are amended to read:

PD 2.08 (title) **Court's right to review indigency eligibility determination.** (1) Any person ... determination.

SECTION \_\_. PD 3.03 (1) (c), (2), and (3) are amended to read:

PD 3.03 (1) (c) The amount which could ... category of the applicant's case.

(2) The amount required ... an essential cost.

(3) The state public defender ... as required.

SECTION \_\_. PD 3.038 (title) and 3.038 (1) (a) are amended to read:

PD 3.038 (title) **Calculation of indigency eligibility**. (1) (a) If the available ... eligible.

Section \_\_. PD 3.039 (title) and (intro.), (1), (2), and (4) are amended to read:

b. The amendment to s. PD 3.03 (1) (c) is somewhat awkward. The first sentence provides that the computation of available assets will include an amount that could be raised by a loan on a person's nonliquid assets, except any automobiles or real estate, with a total value of \$2,500 or more. However, the remainder of the paragraph treats the equity in certain automobiles and in certain real estate. The subsection would be clearer if the first sentence in sub. (1) (c) continued to make an exception for any automobiles or real estate and a new paragraph were created to take into account the amount of funds that could be raised by a loan for which the collateral was certain automobiles or certain real estate.

c. In s. PD 3.05 (1) (a), the word "chapters" should be replaced by the notation "ch."

d. The rule does not contain an effective date provision. [See s. 1.02 (4), Manual.]