Chapter PD 2

ASSIGNMENT PROCEDURE

Note: Chapter SPD 2 was renumbered chapter PD 2 under s. 13.93 (2m) (b) 1., Stats., Register, July, 1995, No. 475.

PD 2.01 Definitions. In this chapter:

(1) "Emergency assignment" means assignment of counsel outside of normal business hours or when regular assignment will not provide both effective and early representation.

(2) "Regular assignment" means any situation in which counsel is required other than under sub. (1).

(4) "Board" means the state public defender board.

(5) "County designee" means the person, department, office, officer, board or agency selected by the county board and, where appropriate, approved by the state public defender, to do indigency determinations pursuant to s. 977.07 (1), Stats.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; cr. (5), Register, August, 1981, No. 308, 9–1–81; r. and recr. (1) and r. (3), Register, November, 1984, No. 347, eff. 12–1–84.

PD 2.02 Emergency assignment procedure. (1) In any emergency situation the state public defender or county designee shall evaluate the person for indigency as soon as possible.

(2) In any emergency situation, the representative of the state public defender shall assign the attorney most readily available to handle the emergency situation, whether that attorney is a staff public defender or private attorney.

(3) Unless the interests of justice require otherwise, the person shall be provided regular counsel under s. PD 2.03 and the attorney who provides emergency representation need not continue on the case and need not be permanently assigned.

(4) If it subsequently appears that the person provided emergency representation was not entitled to publicly compensated counsel, that person shall be required to compensate the state public defender for those services at the hourly rate in existence at the time of appointment of counsel and, in no case in excess of the maximum cost determined by the state public defender to be the value of those legal services.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; renum (1) to (3) to be (2) to (4) and am. (2), cr. (1), Register, August, 1981, No. 308, eff. 9–1–81; am. (2) and (4), Register, November, 1984, No. 347, eff. 12–1–84; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475.

PD 2.03 Regular assignment procedure. (1) The state public defender or county designee shall contact any person who claims or appears to be indigent or has requested counsel for the purposes of assisting that person in completing the indigency questionnaire.

(2) The state public defender and county designee shall be available 24 hours per day including weekends and legal holidays.

(3) The state public defender or county designee shall have immediate access in person or by phone to any individual held in custody, including but not limited to city or county jails, detention facilities, or mental health facilities, upon request by the state public defender or county designee, to advise the person of the right to a free determination of indigency and for the purpose of determining indigency.

(4) The county designee shall, upon finding a person eligible, immediately contact the state public defender for purposes of assignment of counsel.

(5) The state public defender or county designee shall advise all persons charged with a crime, detained for purposes of juvenile or involuntary civil commitment proceedings, or otherwise facing a legal proceeding which is within the scope of representation provided by the state public defender, prior to their initial court appearance, that they have a right to be represented by an attorney in the proceeding if found eligible. The state public defender or county designee shall advise all persons of the applicable repayment obligation specified in s. PD 6.01 and the optional prepayment amount specified in s. PD 6.02. The state public defender or county designee shall also advise all persons prior to their initial appearance that they have a right to a determination of their eligibility for those legal services. The county designee shall forward to the state public defender on a monthly basis the names, addresses, and case numbers of these persons and the dates on which the contacts were made.

(6) If the person is eligible for publicly compensated counsel, a representative of the state public defender shall appoint counsel pursuant to s. 977.08, Stats. If no certified counsel is available in a county governed by s. 977.08 (5) (a), Stats., appointment shall be to certified private counsel in another county.

(7) If the case is to be assigned to a staff attorney, a representative of the state public defender shall notify the supervising attorney in the appropriate office of the state public defender who shall designate a certain attorney to represent that person.

(8) If the case is assigned to local private counsel, a representative of the state public defender shall immediately contact the attorney whose name appears on the top of the appropriate certification list and assign that attorney to represent that person. If that attorney cannot accept the assignment, the next attorney on the list shall be contacted and the first attorney's name shall be placed on the bottom of the list as required by s. 977.08 (3) (c), Stats. If the attorney accepts the assignment, that attorney's name shall be placed on the bottom of the list. The director of the assigned counsel division may authorize a specific representative of the state public defender to make group assignments of cases. Group assignments may be made by number of cases or by designating an attorney to take all cases assigned during a given time period. The director's authorization shall designate the maximum number of cases in a group or the maximum time period the representative may assign. Each attorney on the list of the state public defender shall be offered an equal opportunity at group assignment of cases. In all other respects, group assignments shall be made in the manner specified for individual assignments.

(9) If the case is assigned to local private counsel on a specialized list under s. PD 1.04 (6), the assignment shall serve in lieu of that attorney's next appointment from the regular list.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; am. (1), renum. (2) to (4) to be (5) to (7), cr. (2) to (4), Register, August, 1981, No. 308, eff. 9–1–81; r. and recr. (1), am. (2), renum. (3) to (7) to be (4) to (8) and am. (5) and (6), cr. (3) and (9), Register, November, 1984, No. 347, eff. 12–1–84; emerg. am. (8), eff. 9–22–89; am. (8), Register, April, 1990, No. 412, eff. 5–1–90; correction in (9) made under s. 13.93

(2m) (b) 7., Stats., Register, July, 1995, No. 475; am. (4), (5) and (8), Register, November, 1996, No. 491, eff. 12–1–96.

PD 2.04 Person's right to refuse specific attorney. **(1)** A person may request that the attorney assigned to represent him or her be discharged and that another attorney be assigned, and the state public defender shall honor such request, provided:

(a) It is the only such request made by the person in that case; and

(b) Such change in counsel will not delay the disposition of the case or otherwise be contrary to the interests of justice.

(2) In the event the court or public defender authorizes an attorney to withdraw as counsel, the state public defender shall assign the attorney who next appears on the top of the appropriate certification list and place the original attorney's name on the top of that list. In the event the attorney discharged is a staff public defender, a private attorney may be appointed.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; am. (2), Register, November, 1984, No. 347, eff. 12–1–84.

PD 2.05 Conflict cases. The state public defender may not represent more than one person at trial charged in the same case or any client whose interests conflict with any other client.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; am. Register, November, 1984, No. 347, eff. 12–1–84.

PD 2.06 Counties in which private counsel may be certified. Attorneys may be certified only in those counties in which they reside or maintain their principal office, provided, however, in counties in which there are less than 10 attorneys on any certification list, those attorneys residing or maintaining their principal office in one or more adjacent counties may also be certified for that county. In cases of conflict, attorneys certified in adjoining counties may be appointed.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; am. Register, November, 1984, No. 347, eff. 12–1–84.

PD 2.07 Public representation after case commenced by retained counsel. **(1)** If it is necessary for a person to obtain publicly compensated counsel after having retained counsel because of the lack of sufficient funds, the attorney who was originally retained may be assigned and publicly compensated if either:

(a) The court finds that the interests or administration of justice will be severely damaged by a change in counsel; and

1. It appears that the attorney had a reasonable expectation of receiving his or her entire fee when he or she was retained;

2. The necessity for publicly compensating this retained counsel has occurred no more than once in the preceding 12 months; and

3. The client and attorney consent; or

(b) The retained attorney is certified to provide such representation; and

1. It appears that the attorney had a reasonable expectation of receiving his or her entire fee when he or she was retained;

2. The necessity for publicly compensating this retained counsel has occurred no more than once in the preceding 12 months; and

3. The state public defender, client and attorney consent.

(2) Under no circumstances shall the state public defender compensate counsel for services rendered prior to the effective date of assignment by the state public defender.

(3) The method provided under s. PD 4.025 shall be used to calculate the compensation by the state public defender of the private attorney appointed under sub. (1).

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; am. (1) (b) 2., r. (2) and (4), renum. (3) to be (2), Register, November, 1984, No. 347, eff. 12–1–84; am. (1) (intro), (a) and (b) 3., cr. (3), Register, April, 1990, No. 412, eff. 5–1–90; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475.

PD 2.08 Court's right to review indigency determination. **(1)** Any person determined by the state public defender not to be eligible for publicly compensated counsel may request that the court having jurisdiction over the case review the state public defender's indigency determination.

(2) After affording the defendant and a staff attorney of the state public defender the opportunity to be heard, such court may order the state public defender to provide representation, and the state public defender shall assign counsel.

(3) Court–ordered representation shall not preclude a finding of partial indigency and the requirement that the person make partial payment to the state public defender as provided by s. PD 3.04.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; am. (3), Register, November, 1984, No. 347, eff. 12–1–84; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475.

PD 2.09 Special types of representation. In the following types of cases private local counsel may be assigned from the indicated certification lists:

(1) Probation, parole, or juvenile aftercare revocation cases — from the certified list relating to the original offense.

(2) Extradition cases — from felony or misdemeanor certification list.

(3) Habeas corpus cases (prior to conviction) — from certified list relating to the original offense.

(4) Habeas corpus cases, after conviction — from appellate certification lists or from certification lists relating to the original offense.

(5) Post–conviction motion cases — from appellate certification lists or from certification lists relating to the original offense.

(6) Paternity and contempt cases — from appellate certification lists or misdemeanor or felony certification lists.

(7) Extraordinary remedy cases — from felony, misdemeanor or appellate certification lists, depending on nature of case.

(8) Civil or criminal mental reexamination cases — from certification lists relating to the original proceeding.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; am. (2), (4) to (8), Register, November, 1984, No. 347, eff. 12–1–84.

PD 2.10 Written notice of assignment. **(1)** As soon as a regular assignment of counsel is made, the representative of the state public defender shall provide the clerk of court having jurisdiction over that case, in writing, the name, address, and telephone number of the attorney providing representation.

(2) In cases assigned to local private counsel, the representative of the state public defender shall send that attorney written confirmation of the assignment showing:

(a) The effective date of the assignment;

(b) The type of case, including the court and case number (if known);

(c) The client's full name, address, phone number, and present location;

(d) Information regarding compensation as provided in ch. PD 4.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; correction in (2) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475.

PD 2.11 Appellate representation. **(1)** Appellate representation shall be considered a separate case and reassigned under s. PD 2.03.

(2) The state public defender shall assign to independent private counsel any case in which a staff attorney of the state public defender's office provided trial representation and it is arguable that the client was not afforded effective representation.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475.

PD 2.12 Investigative and expert services for private attorneys. **(1)** The state public defender may make available to private attorneys assigned under these provisions the services of staff investigators. In the event a staff investigator is not available or is providing services in a conflicting case, the state public defender may authorize the private attorney to retain inves-

tigatory services that may reasonably be required, and the investigator shall be compensated by the state public defender.

(2) If a private attorney assigned under these provisions finds it necessary to retain expert assistance, the attorney shall apply to the state public defender for permission to retain that expert assistance. The state public defender may approve the request. In the event of approval, the state public defender shall provide reimbursement for the assistance.

History: Cr. Register, August, 1978, No. 272, eff. 9–1–78; am. Register, November, 1984, No. 347, eff. 12–1–84; emerg. cr. (3) and (4), eff. 2–26–92.

PD 2.13 Staff attorney representation of non–indigent clients. If a court appoints a state public defender staff attorney to represent a non–indigent client, the state public defender shall receive reimbursement from the county for the cost of the state public defender staff attorney's representation as follows:

(1) For legal services rendered, at a rate which is in accordance with chapter 81, Wisconsin Supreme Court Rules.

(2) For expenses incurred incident to representation such as, but not limited to, costs for travel, witnesses, discovery or experts, at a rate at which a private attorney would be reimbursed by the county.

History: Cr. Register, November, 1991, No. 431, eff. 12–1–91.