



Wisconsin State Public Defender

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CR 13-049

Order of the Office of the State Public Defender Adopting Rules (Wis. Admin. Code Chapter PD 3.02(1), 6.01, & 6.02(1))

The State of Wisconsin Public Defender Board (SPD) proposes an order to amend PD 3.02(1), PD 6.01, and 6.02(1) relating to the cost of retained counsel, payment for legal representation, and discount option.

Statutes Interpreted

Sections 977.02(3)(a) and (4m), 977.075

Statutory Authority

Sections 977.02(3)(a) and (4m), 977.075

Agency Authority

Section 977.02(3)(a) requires the public defender board to consider the anticipated costs of effective representation for the type of case in which the person seeks representation. Section 977.02(4m) requires the state public defender board to promulgate rules for payments to the state public defender under s. 977.075. Section 977.075 requires the state public defender board to establish by rule a fee schedule that sets the amount that a client responsible for payment shall pay for the cost of the legal representation if the client does not pay the applicable discount fee.

Related Statutes or Rules

None

Plain Language Analysis

This proposed rule will revise three sections of the PD administrative code to include a new “felony diversion” case category. A “felony diversion” case is one in which a defense attorney and a prosecutor negotiate a felony diversion agreement as an alternative to the filing of formal criminal charges. The SPD role in these felony diversion cases encompasses initial review with the client of the potential charges, negotiations leading to a diversion agreement, and follow-up with the client to assist the client in meeting the conditions of the agreement. The follow-up includes encouraging client participation in treatment and other programming, documenting client compliance, and reporting the client’s progress to the District Attorney’s office.

The SPD currently provides representation in felony diversion cases within the case category of “special proceedings.” The SPD’s data for felony diversion cases show that the attorney time required to handle these matters generally exceeds the time required to provide representation in other special proceedings. The proposed rule adds the felony diversion case category to three schedules: cost of retained counsel, PD § 3.02(1); payment for legal representation, PD § 6.01; and discount option, PD § 6.02(1). These schedules reflect the anticipated cost of retained counsel and set the required payment amounts for legal representation. The proposed rule reflects an anticipated cost of retained counsel of \$1,500 in felony diversion cases, which is half the anticipated cost for representation in felonies. The proposed rule requires SPD clients who are represented in felony diversion clients to contribute \$240 to the cost of

legal representation, which is half the cost of other felonies. The proposed rule allows clients to pay a discount option of \$60, which is the discount option for both felonies and misdemeanors. The felony diversion case category will more accurately reflect the amount of time attorneys spend when representing clients in felony diversion cases.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

There are no existing or proposed federal regulations that address the activities of the proposed rules.

Comparison with Rules in Adjacent States

Adjacent states (Illinois, Iowa, Michigan, and Minnesota) generally require defendants to reimburse the state or county for the cost of public counsel. Those states do not have rules like Wisconsin regarding the cost of retained counsel, payment for legal representation, and discount options for particular case types.

Summary of Factual Data and Analytical Methodologies

None

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

The rule will require individuals who are represented in felony diversion cases to pay \$240 toward the cost of their representation, which is lower than for other felony cases. Clients also have the option to pay a lower discount amount of \$60 as provided in PD § 6.02(1). As this rule would impact only individual clients of the SPD, there is no anticipated economic impact of implementing the rule.

Effect on Small Business

None

Agency Contact Person

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Place to Submit Comments

Comments may be submitted to Devon Lee at leede@opd.wi.gov, or 315 N. Henry Street, 2nd Floor, Madison, WI 53703

Text of Proposed Rule

SECTION 1:

PD 3.02(1) is amended to read:

PD 3.02 Cost of retained counsel. The anticipated cost of retaining counsel shall be determined by this schedule:

1 st degree intentional homicide	\$17,500
Appellate category I	\$9,000
Appellate category II	\$4,500

Other class A/B/C felony	\$5,000
Ch. 980 Original petition	\$6,000
Ch. 980 Post-commitment	\$3,500
Involuntary TPR	\$4,500
Other felony	\$2,200
<u>Felony diversion</u>	<u>\$1,500</u>
Felony delinquency	\$1,500
Revocation	\$1,400
Chapter 55	\$1,200
Paternity	\$1,000
Misdemeanor	\$750
Traffic misdemeanor	\$750
Special proceedings	\$750
Other juvenile	\$600
Chapter 51	\$600

SECTION 2.

PD 6.01 is amended to read:

PD 6.01 Payment for legal representation. Except as provided in ss. PD 6.02 to 6.055, a person who is responsible for payment for legal representation provided by the state public defender shall contribute to the cost of the legal representation according to the following schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$7500	Misdemeanor	\$240
Other Class A or B Felony	\$1200	Revocation	\$240
Chapter 980 Proceedings	\$1200	Juvenile Felony/Termination of Parental Rights	\$480
Other Felony	\$480	Other Juvenile	\$240
<u>Felony Diversion</u>	<u>\$240</u>		
Commitment (Chapter 51)	\$120	Special Proceeding	\$120
Chapter 55	\$480	Paternity	\$240
Appellate/Category I	\$1200	Appellate/Category II	\$480

SECTION 3.

PD 6.02(1) is amended to read:

PD 6.02 Discount option. (1) A client may elect to pay, within 60 days of appointment of counsel by the state public defender, the optional discount amount for the cost of representation specified in the following schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$600	Misdemeanor	\$60
Other Class A or B Felony	\$120	Revocation	\$60
Chapter 980 Proceedings	\$120	Termination of Parental Rights	\$60
Other Felony	\$60	Special Proceeding	\$30
<u>Felony Diversion</u>	<u>\$60</u>	Paternity	\$30
Appellate I	\$120	Appellate II	\$60

SECTION 4: INITIAL APPLICABILITY. This rule first applies to individuals requesting representation from the State Public Defender on the effective date of this rule.

SECTION 5: EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.