

Proposed Rule

PD 3.03 Determination of financial eligibility. (1) An applicant is financially eligible for appointment of counsel by the state public defender if both of the following criteria are met:

(a) *Asset limitations.* The anticipated cost of retained counsel under s. PD 3.02 exceeds the applicant's family assets deemed available under sub. (2) to pay the costs of legal representation.

(b) *Income limitations.* The anticipated cost of retained counsel under s. PD 3.02 exceeds the applicant's family income deemed available under sub. (3) to pay the costs of legal representation.

(2) The state public defender shall ~~consider assets in the manner described in s. 49.145 (3) (a), Stats., and shall consider assets as available to pay the costs of legal representation if the assets exceed the resource limitations of s. 49.145 (3) (a), Stats.,~~ treat assets as available to the person to pay the costs of legal representation if the assets exceed \$2500 in combined equity value except that the state public defender shall exclude the equity value of vehicles up to a total equity value of \$10,000 and shall exclude the first \$30,000 of the equity value of the home that serves as the individual's homestead exclusion from consideration for the applicant's homestead shall be limited to the first \$30,000 of equity.

(3) Subject to subs. (4) and (5), the state public defender shall consider income as available to pay the costs of legal representation if the gross income exceeds 115 percent of the amount specified in 42 U.S.C. s. 9902(2) (2011) ~~the income limitations of s. 49.145 (3) (b), Stats.~~

(4) For the purpose of the calculations under this section, the state public defender shall consider the applicant's anticipated income for the time period beginning at the time of the application and continuing for the following time:

(a) For felony cases and cases under ch. 980, Stats., six months.

(b) For appellate cases, eight months.

(c) For cases under chs. 51 and 55, Stats., two months.

(d) For all other cases, four months.

(5) (a) Notwithstanding the criteria in sub. (1), an applicant is financially eligible for appointment of an attorney by the state public defender if the applicant's only income is derived from one or more of the following sources:

1. A Wisconsin works employment position under s. 49.148

(1) (a), (b), or (c), Stats.

2. Wisconsin works benefits under s. 49.148 (1m), Stats.

3. Supplemental security income for the aged, blind, and disabled under 42 U.S.C. 1381-1383c, relief as defined in s. 49.01 (3), Stats., or any other similar needs-based financial assistance program.

(b) Notwithstanding sub. (1) an applicant is financially eligible for appointment of appellate counsel if the applicant has filed a notice of intent to pursue post-conviction relief under s. 809.30

(2) (b), Stats., indicating that:

1. The state public defender has appointed counsel in the case.

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2. His or her financial circumstances have not materially changed since the date on which the applicant was determined to be eligible for the appointment of counsel in that case.

(6) For the purpose of the calculations under this section, the

state public defender shall consider assets and income of the applicant's spouse as the applicant's assets and income, unless the spouse is alleged to be the victim of a crime allegedly committed by the applicant.

(7) If a parent subject to s. 48.275 (2) (b) or 938.275 (2) (b), Stats., has available income or assets greater than \$100, but less than the anticipated cost of counsel, the parent shall be determined to be indigent in part.

(8) If a person subject to s. 51.605 (1) or 55.107 (1), Stats., has available income or assets greater than \$100, but less than the anticipated cost of counsel, the parent shall be determined to be indigent in part.

(9) The state public defender shall annually review the standards specified in this chapter and shall revise these standards as required.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (2), Register, August, 1981, No. 308, eff. 9-1-81; am. (1) (b), (2) and (4), Register, November, 1984, No. 347, eff. 12-1-84; renum. (1) (b) and (c) to be (1) (c) and (d), cr. (1) (b), am. (2), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) and (4), Register, August, 1990, No. 416, eff. 9-1-90; emerg. am. (1) (c), (2) and (4), cr. (2m), eff. 5-12-95; am. (1) (c), (2) and (4), cr. (2m), Register, January, 1996, No. 481, eff. 2-1-96; **CR 10-133: r. and recr. Register April 2011 No. 664, eff. 6-19-11.**