Title 18 – PUBLIC DEFENDER COMMISSION

Division 10—Office of State Public Defender

Chapter 4 — Payment of Private Counsel Litigation Costs

PROPOSED RULE

COPY

18 CSR 10-4.010 Payment of Private Counsel Litigation Costs

PURPOSE: This rule provides a process for appointed, pro bono, and privately retained defense counsel representing indigent defendants in eligible criminal cases to request coverage of reasonable litigation expenses from the Office of the State Public Defender.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

1. Definitions.

(A) Appointed counsel, for purposes of this rule, refers to attorneys who are neither in the employ of the Office of the State Public Defender nor contracted by the State Public Defender, who were appointed to an eligible criminal case in question by the court due to the unavailability of the public defender.

(B) Eligible criminal case means any case in which, but for private counsel's representation, an indigent defendant would be entitled to public defender services as set forth in Mo Rev Statutes, Section 600.042.3-4 (2013).

(C) Indigent defendant means a person who meets the indigence standards for public defender representation as set forth in Mo. Rev. Statutes, Section 600.086.1-3(2013) and MO Code Regs. Title 18, Section 10-3.010 (2006).

(D) Litigation expenses include, but are not limited to, the costs of investigation, depositions, expert witnesses and consultants, forensic tests or examinations, records, transcripts, et cetera, which are reasonably necessary for the presentation of a defense on behalf of, or testing of the state's case against, the indigent defendant. Attorney's fees and costs associated with support staff or office overhead do not constitute litigation expenses.

(E) Pro bono counsel, for purposes of this rule, refers to attorneys who are neither in the employ of the Office of the State Public Defender nor contracted by the State Public Defender, but

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agreed to provide defense representation for an indigent defendant in an eligible criminal case without pay.

(F) Privately retained defense counsel, for purposes of this rule, refers to attorneys who are neither in the employ of the Office of the State Public Defender nor contracted by the State Public Defender, who were hired by or on behalf of the defendant to provide defense representation in the case in question in return for an agreed upon fee.

(G) State Public Defender, for purposes of this rule shall encompass both the Director of the Office of the State Public Defender and his/her designee(s) to whom the responsibility and duties described herein have been assigned.

2. Qualification of a Case for Public Defender Assistance with Litigation Expenses

(A) Before specific requests for litigation expenses may be considered by the State Public Defender, (1) the state public defender must approve the case as qualified for litigation expense assistance from public defender funds and (2) litigation funds must be available.

(B) To qualify for litigation expense assistance:

1) Proof must be provided that the defendant is indigent and charged in an eligible criminal case. This shall be done through completion of the Application and Affidavit Requesting Public Defender Services and provision of a copy or list of all pending charges against the defendant.

2) If the defendant is represented by appointed counsel, a copy of the court's appointment is required. Upon provision of the appointment, charges, and proof of indigence, the case shall be qualified for litigation expense assistance, pursuant to MO Rev Stat Section 600.064.4.

3) If the defendant is represented by pro bono counsel, the attorney shall submit a statement that he/she is providing representation pro bono. Upon provision of this verification of pro bono status, the charges, and proof of indigence, the State Public Defender may qualify a case for litigation expense assistance when it is determined to be in the best interests of the Office of the State Public Defender to do so.

4) If the defendant is represented by privately retained counsel, the attorney shall submit a statement detailing the fee agreement reached with the defendant, as well as a list of all fees and expense reimbursements paid to date by or on behalf of the defendant, and any litigation expenses already incurred. Upon provision of this fee information, the charges, and proof of indigence, the Office of the State Public Defender may approve litigation expense assistance when it is determined to be in the interests of Office of the State Public Defender to do so. In making this determination, the Office of the State Public Defender will take into account fees paid to contract counsel in similar cases. If the amount private counsel received in the instant case, less litigation expenses already paid by the private counsel, does not exceed what the Office of the State Public Defender would ordinarily pay in a similar case, or within the

discretion of the Office of the State Public Defender does not significantly exceed that amount, and there is no reasonable expectation that private counsel will receive in excess of this amount from the client, the case may be eligible for litigation expenses.

(C) The Office of the State Public Defender shall make available all forms and information necessary to request approval of a case for litigation expense assistance on its website and upon request, and shall designate therein the name and contact information for the individual or department charged with reviewing and processing such requests.

(D) Upon a determination by the State Public Defender that a case is eligible for litigation expense assistance, the attorney providing representation shall be entitled to submit requests for reasonable litigation expenses on the defendant's behalf.

3. Requests for Litigation Expenses in a Qualified Case

(A) Each anticipated litigation expense for which public defender assistance is sought must be requested and approved in advance of any expense being incurred or service provided, in accordance with procedures established by the State Public Defender.

(B) All information provided to the Office of the State Public Defender pertaining to a litigation expense request shall have the same confidentiality protections applicable to cases handled by Office of the State Public Defender.

(C) The State Public Defender shall have sole discretion in determining whether any request to provide litigation expenses from the Public Defender budget shall be approved or denied, along with any conditions and/or restrictions determined appropriate for expenditure of Public Defender funds.

(D) The State Public Defender shall develop procedures for the submission and payment of invoices for approved litigation expenses. Compliance with said procedures by the attorney, and by any service providers retained by the attorney pursuant to MSPD's approval of a litigation expense request, is required in order to obtain payment.

(E) The State Public Defender retains the right to decline to pay costs incurred in excess of the amount approved. It shall be the responsibility of the attorney to ensure that any service providers retained pursuant to State Public Defender approval of a litigation expense request are informed of the maximum approved amount and of the need to seek additional approval before exceeding that amount.

AUTHORITY: Sections 600.017(10), 600.041(8), 600.064.4, 600.086 and 600.090, RSMo. *Emergency rule filed Dec. 18, 2007. Original rule filed Dec. 27, 2007, effective July 30, 2008. Amendment filed October 6, 2014. Rescinded: Filed October 8, 2014.

*Original authority: 600.017, RSMo 1982; 600.086, RSMo 1976, amended 1982, 1993; and 600.090, RSMo 1976, amended 1982, 1986.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Public Defender Commission, 1000 West Nifong, Building 7, Suite 100, Columbia, Missouri 65203. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.