

493—6.10(13B,17A) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

6.10(1) State public defender discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the state public defender upon consideration of all relevant factors.

6.10(2) Burden of persuasion. The petitioner has the burden of persuasion when a petition is filed for a waiver or variance from a state public defender rule. The standard of proof is clear and convincing evidence.

6.10(3) Special waiver or variance rules not precluded. This chapter shall not preclude the state public defender from granting waivers or variances in other contexts or on the basis of other standards if a statute authorizes the state public defender to do so and the state public defender deems it appropriate to do so.

6.10(4) Administrative deadlines. When the rule from which a waiver or variance is sought establishes administrative deadlines, the state public defender shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

6.10(5) Conditions. The state public defender may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

a. Each petition for a waiver or variance shall be evaluated by the state public defender based on the unique, individual circumstances set out in the petition;

b. A waiver or variance, if granted, shall be drafted by the state public defender so as to provide the narrowest exception possible to the provisions of the rule;

c. The state public defender may place on a waiver or variance a condition that the state public defender finds desirable to protect the public health, safety, and welfare;

d. A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable; and

e. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the state public defender, a waiver or variance may be renewed if the state public defender finds that all of the factors set out in rule 6.4(13B,17A) remain valid.

6.10(6) Time for ruling. The state public defender shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the state public defender has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver or variance.

6.10(7) When deemed denied. Failure of the state public defender to grant or deny a petition within the required time period shall be deemed a denial of that petition by the state public defender.

6.10(8) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.