

FEB 3 2004
Place On Calendar

HOUSE FILE 2138
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 539)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to payment of legal expenses for indigent persons
2 by the state public defender.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HOUSE FILE 2138

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H-8015

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1 Amend House File 2138 as follows:

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2 1. Page 2, line 22, by inserting after the word
3 "person" the following: "and provide a copy of the
4 claim to the judge who presided over the case at the
5 time the claim is submitted".

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By HUTTER of Scott

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H-8015 FILED FEBRUARY 11, 2004

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HF 2138

1 Section 1. Section 13B.4, subsection 2, Code Supplement
2 2003, is amended to read as follows:

3 2. The state public defender shall file a notice with the
4 clerk of the district court in each county served by a public
5 defender ~~a designation of which local~~ designating which public
6 defender office shall receive notice of appointment of cases.
7 The state public defender may also designate a nonprofit
8 organization which contracts with the state public defender to
9 provide legal services to eligible indigent persons. Except
10 as otherwise provided, in each county in which the state
11 public defender files such a designation, the state public
12 ~~defender or its~~ defender's designee shall be appointed by the
13 court to represent all eligible indigents, in all of the cases
14 and proceedings specified ~~under subsection 1~~ in the
15 designation. The appointment shall not be made if the state
16 public defender notifies the court that the ~~local~~ public
17 defender designee will not provide legal representation in
18 certain cases as identified in the designation by the state
19 public defender.

20 Sec. 2. Section 13B.4, subsection 3, Code Supplement 2003,
21 is amended to read as follows:

22 3. The state public defender may contract with persons
23 admitted to practice law in this state and nonprofit
24 organizations employing persons admitted to practice law in
25 this state for the provision of legal services to indigent
26 persons.

27 Sec. 3. Section 13B.4, subsection 4, paragraph c,
28 subparagraph (2), subparagraph subdivision (d), Code
29 Supplement 2003, is amended to read as follows:

30 (d) ~~If the appointment of the claimant was obtained~~
31 ~~without complying~~ appointed contrary to section 814.11, or the
32 claimant failed to comply with section 814.117-subsection-6,
33 ~~or section 815.10, subsection 5.~~

34 Sec. 4. Section 13B.9, subsection 4, Code Supplement 2003,
35 is amended to read as follows:

1 4. If a conflict of interest arises or if the local public
2 defender is unable to handle a case because of a temporary
3 overload of cases, the local public defender shall return the
4 case to the court. If the case is returned and the state
5 public defender has filed a successor designation, the court
6 shall appoint the successor designee. If there is no
7 successor designee on file, the court shall make the
8 appointment pursuant to section 815.10. As used in this
9 subsection, "successor designee" may include another local
10 public defender office or a nonprofit organization that has a
11 ~~contract with the office of the state public defender for the~~
12 ~~provision of legal services to indigent persons~~ contracted
13 with the state public defender under section 13B.4, subsection
14 3.

15 Sec. 5. Section 815.10A, Code 2003, is amended to read as
16 follows:

17 815.10A CLAIMS FOR COMPENSATION.

18 1. An attorney other than a public defender who has been
19 appointed by the court under this chapter must ~~apply~~ submit a
20 claim to the state public defender for compensation and
21 reimbursement of expenses incurred in the representation of an
22 indigent person.

23 2. Claims for compensation and reimbursement submitted by
24 an attorney appointed after June 30, 2004, are not considered
25 timely unless the claim is submitted to the state public
26 defender within forty-five days of the sentencing, acquittal,
27 or dismissal of a criminal case or the final ruling or
28 dismissal of any other type of case.

29 ~~2-~~ 3. An attorney shall obtain court approval prior to
30 exceeding the fee limitations established by the state public
31 defender pursuant to section 13B.4. An attorney may exceed
32 the fee limitations, if good cause for exceeding the fee
33 limitations is shown. An attorney may obtain court approval
34 after exceeding the fee limitations, if good cause excusing
35 the attorney's failure to seek approval prior to exceeding the

1 fee limitations is shown. However, failure to file an
2 application to exceed a fee limitation prior to exceeding the
3 fee limitation does not constitute good cause. The order
4 approving an application to exceed the fee limitations shall
5 be effective from the date of filing the application unless
6 the court order provides an alternative effective date.
7 ~~Failure-to-timely-file-an-application-to-exceed-a-fee~~
8 ~~limitation-after-exceeding-the-fees-shall-not-constitute-good~~
9 ~~cause.~~ The application and the court order approving the
10 application to exceed fee limitations and any other order
11 affecting the amount of compensation or reimbursement shall be
12 submitted with any claim for compensation.

13 3- 4. If the information is not submitted as required
14 under this section and under the rules of the state public
15 defender, the claim for compensation may be denied until the
16 information is provided. Upon submitting receipt of the
17 required information, the state public defender may approve
18 reasonable and necessary compensation, as provided for in the
19 administrative rules and the law.

20 Sec. 6. Section 815.11, Code Supplement 2003, is amended
21 to read as follows:

22 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

23 Costs incurred under chapter 229A, 665, or 822, or section
24 232.141, subsection 3, paragraph "c", or section 598.23A,
25 814.9, 814.10, 814.11, 815.4, 815.7, 815.10, or 908.11 on
26 behalf of an indigent shall be paid from funds appropriated by
27 the general assembly to the office of the state public
28 defender in the department of inspections and appeals for
29 those purposes. Costs incurred representing an indigent
30 defendant in a contempt action, or representing an indigent
31 juvenile in a juvenile court proceeding under chapter 600, are
32 also payable from these funds. However, costs incurred in any
33 administrative proceeding or in any other proceeding under
34 chapter 598, 600, 600A, 633, or 915 or other provisions of the
35 Code or administrative rules are not payable from these funds.

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EXPLANATION

This bill relates to payment of legal expenses for indigent persons by the state public defender.

The bill provides that a nonprofit organization may contract with the state public defender to provide legal services to indigent persons.

The bill provides that if an attorney has been retained or agreed to represent a person and subsequently applies to the court for appointment to represent the person as an indigent, then the attorney must provide the state public defender with any representation agreement, and information on any moneys earned prior to appointment by the court. If the attorney fails to disclose any representation agreement or moneys earned prior to appointment, the state public defender may then deny the attorney's claim for attorney fees.

The bill provides that an attorney's claim for compensation and reimbursement of expenses for representing an indigent person must be submitted to the state public defender within 45 days of the sentencing, acquittal, or dismissal of a criminal case or the final ruling or dismissal of any other type of case.

The bill provides that an attorney may apply to the court to exceed attorney fee limitations for representing an indigent person after the attorney has exceeded the fee limitations, if good cause excusing the attorney's failure to seek approval prior to exceeding the fee limitations is shown. The bill provides that failure to file an application to exceed a fee limitation prior to exceeding the fee limitation does not constitute good cause.

The bill also provides that costs incurred representing an indigent defendant in a contempt hearing, and an indigent juvenile in an adoption proceeding under Code chapter 600 are payable from the indigent defense fund.

Schickel, Ch
Boal
Reasoner

Succeeded By
SF 2138

HSB 539
JUDICIARY

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS AND APPEALS BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

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Memo

To: Members of the 80th General Assembly
From: Steve Young *SKY*
Date: December 1, 2003
Re: Proposed State Public Defender Legislation

The State Public Defender through the Department of Inspections and Appeals proposes legislation to clarify various provisions related to appointments of public defenders, current practices, and payment of claims.

Section 1, 2 and 4 clarify the current practice of the State Public Defender designating a non-profit organization to receive cases directly from the court. The Linn County Advocate, which predates the public defender system, and the Youth Law Center have been receiving these appointments. Changes made during the 2003 session has been read as limiting the appointment of a non-profit to situations in which the public defender has to first receive and then reject these cases. This legislation clarifies the appointment process for a non-profit organization designated by the State Public Defender.

Section 3 provides for denial of claims from attorneys in appeals in situations in which the court has not followed the provisions of 814.11 in appointing counsel. That section provides for appointment of the appellate defender to all cases and appointment of a contract attorney if the appellate defender is unable to handle the case. Because the appellate defender is part of the public defender system and because the state public defender contracts with attorneys throughout the state for a flat fee for doing appeals, appointment of a non-contract attorney is much more expensive. This provision limits the state's exposure to unnecessary appellate fees.

Section 5 clarifies the current law regarding submission and payment of claims. The provisions contained in paragraphs 1, 2 and 4 merely correct problems with the current language and are non-substantive. The provisions of paragraph 2 set a time limit for submission of attorney fee claims. Because persons receiving legal services are required to make restitution, an inordinate delay in submission of claims by attorneys hampers the court's ability to both order and collect restitution. Over the past year, judges, clerks of court and defendants have expressed frustration over not having timely information about payment of attorney fee claims. This provision requires that the claim be filed in a timely fashion so that the courts and defendants know how much restitution should be made. In addition, this provision should greatly reduce the number of untimely claims submitted to the State Appeal Board for payment.

Section 6 clarifies the provision of the code for which the indigent defense fund is responsible. This merely codifies current practice.

If you have any questions regarding this legislation, please contact Mark Smith, First Assistant State Public Defender, at 515-242-6513 or via e-mail at mark.smith@spd.state.ia.us or Beverly Zylstra, Legislative Liaison, at 515-281-6442 or via e-mail at beverly.zylstra@dia.state.ia.us.