

CHAPTER 1063

INDIGENT DEFENSE — PRACTICES AND PROCEDURES

S.F. 2231

AN ACT relating to the practices and procedures of the state public defender.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 13B.4, subsections 2 and 3, Code 2011, are amended to read as follows:

2. The state public defender shall file a notice with the clerk of the district court in each county served by a public defender designating which public defender office shall receive notice of appointment of cases. ~~The state public defender may also enter into a contract with a nonprofit organization or an attorney, designating that the nonprofit organization or attorney provide legal services to eligible indigent persons as the state public defender's designee.~~ The state public defender may also designate a person admitted to practice law in this state or a nonprofit organization employing persons admitted to practice law in this state to be appointed by the court as a designee of the state public defender. In each county in which the state public defender files a designation, the state public defender's designee shall be appointed by the court to represent all eligible persons or to serve as guardian ad litem for eligible children in juvenile court in all cases and proceedings specified in the designation. The appointment shall not be made if the state public defender or the state public defender's designee notifies the court that the state public defender's designee will not provide services in certain cases as identified in the designation by the state public defender.

3. The state public defender may contract with persons admitted to practice law in this state and nonprofit organizations employing persons admitted to practice law in this state for the provision of legal services to indigent persons. The contract may incorporate administrative rules into the terms of the contract or expressly provide that payments may be paid that are other than on an hourly rate basis for legal services provided, including but not limited to a fixed rate per case or per month.

Sec. 2. Section 13B.9, subsection 1, paragraphs a and b, Code 2011, are amended to read as follows:

a. Represent ~~without fee~~ an indigent person who is under arrest or charged with a crime if the indigent person requests representation or the court orders representation when the type of case, the county, and the court have been designated for such representation by the state public defender. The local public defender shall counsel and defend an indigent defendant at every stage of the criminal proceedings and prosecute before or after conviction any appeals or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case.

b. Represent an indigent party, ~~without fee and upon an order of the court,~~ in child in need of assistance, family in need of assistance, delinquency, and termination of parental rights proceedings pursuant to chapter 232 ~~in a county served by a public defender~~ when designated by the state public defender to represent the indigent party in the type of case for that county. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 ~~in a county served by a public defender~~ to which the local public defender is appointed and prosecute before or after judgment any appeals or other remedies which the local public defender considers to be in the interest of justice unless other counsel is appointed to the case.

Sec. 3. Section 13B.9, subsection 4, paragraph a, Code 2011, is amended to read as follows:

a. If a conflict of interest arises or if the local public defender is unable to handle a case because of a temporary overload of cases, the local public defender shall return the case to the court. If the case is returned and the state public defender has filed a successor designation, the court shall appoint the successor designee. If there is no successor designee on file, the court shall make the appointment pursuant to section 815.10. As used in this subsection, "successor designee" may include another local public defender office, or a

nonprofit organization or a person admitted to practice law in this state that has contracted with the state public defender under section 13B.4, subsection 3.

Sec. 4. Section 602.8107, subsection 1, Code 2011, is amended to read as follows:

1. As used in this section, “*court debt*” means all fines, penalties, court costs, fees, forfeited bail, surcharges under chapter 911, victim restitution, ~~restitution for~~ court-appointed attorney fees or for expenses of a public defender ordered pursuant to section 815.9, or fees charged pursuant to section 356.7 or 904.108.

Sec. 5. Section 814.11, subsections 3 and 4, Code 2011, are amended to read as follows:

3. In a juvenile case in ~~which a petition on appeal is required~~ under chapter 232 or a proceeding under chapter 600A, the trial attorney shall continue representation throughout the appeal without an additional appointment order unless the court grants the attorney permission to withdraw from the case. If the court grants the attorney permission to withdraw, the court shall appoint an attorney who has a contract with the state public defender to provide legal services in appellate cases.

4. ~~If the state appellate defender is unable to handle the case or withdraws from the case, or if the appeal is other than an indictable offense or denial of postconviction relief including a juvenile case in which a petition on appeal is not required or a juvenile case in which the trial attorney has withdrawn from the case,~~ In all other cases not specified in subsection 2 or 3, or except as otherwise provided in this section, the court shall appoint an attorney to represent an indigent person who has a contract with the state public defender to ~~handle such an appeal~~ provide legal services in appellate cases.

Sec. 6. Section 815.4, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

815.4 Special witnesses for indigents.

1. An application for an expert or other witnesses under Iowa rule of criminal procedure 2.20 shall include a statement attesting that the attorney advised the indigent person of the application, the expected expenses, and the potential for reimbursement of the expenses pursuant to section 815.9.

2. a. The court shall authorize the securing of a witness prior to the witness incurring any expenses.

b. The court shall either set in advance a maximum dollar amount of the claim for expenses or approve the final amount of the claim for expenses as reasonable compensation.

c. The state public defender shall only approve the claim for the expenses of the witness if the securing of the witness was authorized by the court and either the maximum dollar amount of the claim for expenses was set prior to the expenses being incurred or the court has approved the final amount of the claim for expenses as reasonable compensation.

3. A witness secured for an indigent person under Iowa rule of criminal procedure 2.20 shall file a claim for compensation with the state public defender as required by the rules of the state public defender, and the claim shall be supported by an itemization specifying the time expended, services rendered, and expenses incurred on behalf of the indigent person.

Sec. 7. Section 815.7, subsection 5, Code 2011, is amended to read as follows:

5. The expenses shall include any sums as are necessary for investigations in the interest of justice, and the cost of obtaining the transcript of the trial record and briefs if an appeal is filed. The attorney need not follow the case into another county or into the appellate court unless so directed by the court. If the attorney follows the case into another county or into the appellate court, the attorney shall be entitled to compensation as provided in this section. Only one attorney fee shall be so awarded in any one case except that in class “A” felony cases, two may be authorized if both attorneys are appointed pursuant to section 815.10.

Sec. 8. Section 815.9, subsection 3, Code 2011, is amended to read as follows:

3. If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person pursuant to this section. “*Legal assistance*” as used in this section shall include not only the expense of the public defender or an appointed attorney, but also transcripts, witness fees, expenses, and any other

goods or services required by law to be provided to an indigent person entitled to an appointed attorney.

Sec. 9. Section 815.9, subsections 4, 5, 6, 7, and 9, Code 2011, are amended by striking the subsections and inserting in lieu thereof the following:

4. *a.* If the appointed attorney is a public defender, the attorney shall submit a report to the court specifying the total hours of service plus expenses incurred in providing legal assistance to the person. In a criminal case, the report shall be submitted within ten days of the date of sentencing, acquittal, or dismissal. In a case other than a criminal case, the report shall be submitted within ten days of any court ruling or the conclusion of a trial held in the case, or if the case is dismissed within ten days of the dismissal.

b. If the appointed attorney is a private attorney or is employed by a nonprofit organization, the state public defender shall report to the clerk of the district court the amounts of any approved claims for compensation and expenses paid on behalf of a person receiving legal assistance after such claims have been reviewed and paid by the state public defender.

5. If the person receiving legal assistance is convicted in a criminal case, the total costs and fees incurred for legal assistance shall be ordered paid when the reports submitted pursuant to subsection 4 are received by the court, and the court shall order the payment of such amounts as restitution, to the extent to which the person is reasonably able to pay, or order the performance of community service in lieu of such payments, in accordance with chapter 910.

6. If the person receiving legal assistance is acquitted in a criminal case or is a party in a case other than a criminal case, the court shall order the payment of all or a portion of the total costs and fees incurred for legal assistance, to the extent the person is reasonably able to pay, after an inquiry which includes notice and reasonable opportunity to be heard.

7. When ordering payment of all or a portion of the total costs and fees incurred for legal assistance under subsection 6, the court may order payment of the costs and fees in reasonable installments as provided in section 909.3, or may order the entire amount due and payable. If any costs and fees are not paid at the time specified in the order of the court, a judgment shall be entered against the person for any unpaid amount. Such judgment may be enforced by the state in the same manner as a civil judgment.

9. Notwithstanding subsections 3 and 6, a minor granted a court-appointed attorney or guardian ad litem under section 232.11 in a juvenile proceeding shall not be ordered to reimburse costs and fees incurred for legal assistance except as otherwise provided in chapter 232.

Sec. 10. Section 815.10, subsections 1 and 2, Code 2011, are amended to read as follows:

1. *a.* The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender's designee pursuant to section 13B.4 to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, termination under chapter 600A, detention under section 811.1A, competency under chapter 812, parole revocation if applicable under section 908.2A, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, termination under chapter 600A, detention under section 811.1A, competency under chapter 812, parole revocation under chapter 908, or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9. Only one attorney shall be appointed

b. An indigent person is entitled to the appointment of one attorney in all cases, except that in class "A" felony cases the court may appoint two attorneys. However, in a class "A" felony case, a person who is represented by a privately retained attorney or by an attorney who has agreed to represent the person is not entitled to have an attorney appointed to represent the person based upon the indigence of the person.

2. If the state public defender or the state public defender's designee is unable to represent an indigent person, the court shall appoint an attorney who has a contract with the state

public defender to represent the person in the particular type of case and in the county in which the case is pending.

Sec. 11. Section 815.10A, subsection 3, Code 2011, is amended to read as follows:

3. a. An attorney shall obtain court approval prior to exceeding the fee limitations established by the state public defender pursuant to section 13B.4. An attorney may exceed the fee limitations if good cause for exceeding the fee limitations is shown. An attorney may obtain court approval after exceeding the fee limitations if good cause excusing the attorney's failure to seek approval prior to exceeding the fee limitations is shown. However, failure to file an application to exceed a fee limitation prior to exceeding the fee limitation does not constitute good cause. The order approving an application to exceed the fee limitations shall be effective from the date of filing the application unless the court order provides an alternative effective date. The application and the court order approving the application to exceed fee limitations and any other order affecting the amount of compensation or reimbursement shall be submitted with any claim for compensation.

b. Except for an application to exceed fee limitations by an attorney or guardian ad litem representing a juvenile in a juvenile proceeding, an application to exceed fee limitations shall include a statement attesting that the attorney advised the indigent person of the application, and the potential for reimbursement of the attorney fees pursuant to section 815.9.

Sec. 12. Section 815.14, Code 2011, is amended to read as follows:

815.14 Fee for public defender.

~~When determining the~~ The amount of restitution for the expense of the public defender for each case under section 910.3, the expense of the public defender or the total cost of legal assistance required to be reimbursed under section 815.9, subsection 3, shall be include all expenses incurred in the representation of the person combined with the attorney fees for the public defender calculated at the same hourly rate of compensation specified under section 815.7. However, the ~~The expense of the public defender shall not~~ may exceed the fee limitations established in section 13B.4. The expense of the public defender required to be reimbursed is subject to a determination of the extent to which the person is reasonably able to pay, as provided for in section 815.9 and chapter 910.

Approved April 5, 2012