

## CHAPTER 51

### INDIGENT DEFENSE — PAYMENTS TO PRIVATELY RETAINED ATTORNEYS

S.F. 590

**AN ACT** relating to payments from the indigent defense fund by the state public defender for costs incurred by a privately retained attorney representing an indigent person.

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

Section 1. **NEW SECTION. 815.1 Costs incurred by a privately retained attorney representing an indigent person.**

1. The court shall not authorize the payment of state funds for the costs incurred in the legal representation of an indigent person represented by a privately retained attorney unless the requirements of [this section](#) are satisfied.

2. An application for the payment of state funds for the costs incurred in the legal representation of an indigent person that is submitted by the privately retained attorney shall be filed with the court in the county in which the case was filed and include all of the following:

a. A copy of the attorney's fee agreement for the representation, including hourly rate, amount of retainer or other moneys received, and number of hours of work completed by the attorney to date.

b. A showing that the costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under [section 815.10](#).

c. An itemized accounting of all compensation paid to the attorney including the amount of any retainer.

d. The amount of compensation earned by the attorney.

e. Information on any expected additional costs to be paid or owed by the indigent person to the attorney for the representation.

f. A signed financial affidavit completed by the indigent person.

3. The privately retained attorney shall submit a copy of the application and all attached documents to the state public defender.

4. The court shall not grant the application and authorize all or a portion of the payment to be made from state funds unless the court determines, after reviewing the application and supporting documents, that all of the following apply:

a. The represented person is indigent and unable to pay for the costs sought to be paid.

b. The costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under [section 815.10](#).

c. The moneys paid or to be paid to the privately retained attorney by or on behalf of the indigent person are insufficient to pay all or a portion of the costs sought to be paid from state funds.

(1) In determining whether the moneys paid or to be paid to the attorney are insufficient for purposes of this paragraph "c", the court shall add the hours previously worked to the hours expected to be worked to finish the case and multiply that sum by the hourly rate of compensation specified under [section 815.7](#).

(2) If the product calculated in subparagraph (1) is greater than the moneys paid or to be paid to the attorney by or on behalf of the indigent person, the moneys shall be considered insufficient to pay all or a portion of the costs sought to be paid from state funds.

(3) If the private attorney is retained on a flat fee agreement, and a precise record of hours worked is not available, the attorney shall provide the court a reasonable estimate of the time expended to allow the court to make the calculation pursuant to this paragraph "c".

5. Either the privately retained attorney for the indigent person or a representative from the office of the state public defender may participate in a hearing on the application by telephone.

6. If the court finds the payment of the costs incurred or to be incurred by a privately retained attorney are reasonable and necessary, the order of the court shall specify the maximum amount of costs which the attorney may incur without further court order, and

that the actual amount of such costs to be allowed are subject to review by the state public defender for reasonableness.

7. Following entry of an order allowing costs to be incurred by a privately retained attorney representing an indigent person, the attorney or a claimant referred to in [subsection 9](#) seeking payment or reimbursement for costs shall submit a claim for payment in accordance with the rules of the state public defender.

8. If the privately retained attorney or claimant referred to in [subsection 9](#) seeking payment or reimbursement for costs pursuant to [this section](#) fails to comply with the requirements of [this section](#), the state public defender may deny all or a part of the costs requested.

9. [This section](#) applies to payments to witnesses under [section 815.4](#), evaluators, investigators, and certified shorthand reporters, and for other costs incurred by a privately retained attorney in the legal representation.

10. [This section](#) shall not be construed to restrict the payment of costs on behalf of indigent persons represented on a pro bono basis.

Approved May 1, 2019