

### **13B.4 Duties and powers of state public defender.**

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under section 811.1A or chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to chapter 908. The state public defender shall not engage in the private practice of law.

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 designate a nonprofit organization which has a contract with the state public defender to provide legal services to eligible indigent persons. 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 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.

4. *a.* The state public defender shall establish fee limitations for particular categories of cases. The fee limitations shall be reviewed at least every three years. In establishing and reviewing the fee limitations, the state public defender shall consider public input during the establishment and review process, and any available information regarding ordinary and customary charges for like services; the number of cases in which legal services to indigents are anticipated; the seriousness of the charge; an appropriate allocation of resources among the types of cases; experience with existing hourly rates, claims, and fee limitations; and any other factors determined to be relevant.

*b.* The state public defender shall establish a procedure for the submission of all claims for payment of indigent defense costs, including the submission of interim claims in appropriate cases.

*c.* The state public defender may review any claim for payment of indigent defense costs and may take any of the following actions:

(1) If the charges are appropriate and reasonable, approve the claim for payment.

(2) Deny the claim under any of the following circumstances:

(a) If it is not timely.

(b) If it is not payable as an indigent defense claim under chapter 815.

(c) If it is not payable under the contract between the claimant and the state public defender.

(d) If the claimant was appointed contrary to section 814.11, or the claimant failed to comply with section 815.10, subsection 5.

(3) Request additional information or return the claim to the claimant, if the claim is incomplete.

(4) If any portion of the claim is excessive, notify the claimant that the claim is excessive and will be reduced to an amount which is not excessive, and reduce and approve the balance of the claim.

(5) If any portion of the claim is not payable within the scope of appointment of the claimant, notify the claimant that a portion of the claim is not within the scope of appointment and is not payable, deny those portions of the claim that are not payable, and approve the balance of the claim.

*d.* Notwithstanding chapter 17A, the claimant may seek review of any action or intended action denying or reducing any claim by filing a motion with the court with jurisdiction over the original appointment for review.

(1) The motion must be filed within twenty days of any action taken by the state public defender.

(2) The motion shall be set for hearing by the court and the state public defender shall be provided with at least ten days' notice of the hearing. The state public defender shall not be required to file a resistance to the motion filed under this paragraph "*d*".

(3) The state public defender or the claimant may participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for all telephone charges.

(4) The filing of a motion shall not delay the payment of the amount approved by the state public defender.

(5) If a claim or portion of the claim is denied, the action of the state public defender shall be affirmed unless the action conflicts with a statute or an administrative rule.

(6) If the claim is reduced for being excessive, the claimant shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary.

(7) The decision of the court following a hearing on the motion is a final judgment appealable by the state public defender or the claimant.

(8) If the state public defender is not first notified and given an opportunity to be heard, any court order entered after the state public defender has taken action on a claim, which affects that claim, is void.

5. In reviewing a claim for compensation submitted by an attorney who had been retained or agreed to represent an indigent person prior to appointment, the state public defender may consider any moneys earned or paid to the attorney prior to the appointment in determining whether the claim is reasonable and necessary or excessive. The attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. The state public defender is authorized to contract with county attorneys to provide collection services related to court-ordered indigent defense restitution.

7. The state public defender shall not revise the allocations to the office of the state public defender and the allocations for indigent defense of adults and juveniles, unless prior notice of the revisions is given to the legislative services agency, the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system, and the co-chairpersons and ranking members of the house and senate committees on appropriations.

8. The state public defender shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter and chapter 815.

9. Executing the duties of this section shall not be deemed a violation of section 68B.6.

[81 Acts, ch 23, § 4, 8]

85 Acts, ch 36, §1; 88 Acts, ch 1161, §4; 89 Acts, ch 51, §1; 91 Acts, ch 268, §411, 439; 92 Acts, ch 1242, §18; 93 Acts, ch 175, §15; 94 Acts, ch 1107, §20; 94 Acts, ch 1187, §17; 96 Acts, ch 1040, §2; 99 Acts, ch 12, §1; 99 Acts, ch 135, §36; 99 Acts, ch 208, §46; 2000 Acts, ch 1154, §3; 2002 Acts, ch 1067, §15; 2002 Acts, ch 1119, §116; 2003 Acts, ch 35, §46, 49; 2003 Acts, ch 51, §13; 2004 Acts, ch 1040, §13; 2004 Acts, ch 1084, §1; 2004 Acts, ch 1091, §2; 2004 Acts, ch 1175, §195; 2005 Acts, ch 107, §1, 14; 2006 Acts, ch 1041, §24; 2007 Acts, ch 22, §7; 2008 Acts, ch 1061, §1

### **Footnotes**

Intent that state public defender provide for defense of major felony case defendants by public defenders on regional basis; 91 Acts, ch 268, § 440

Authority of state public defender in termination of parental rights proceedings under chapter 600A, see §600A.6B