

**493—13.7(13B,815) Payment of costs incurred by privately retained attorney representing indigent person.** No payment of state funds for the costs incurred in the legal representation of an indigent person shall be authorized or paid unless the requirements of this rule are satisfied.

**13.7(1) Application for payment.** An application or motion 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 Iowa Code 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.

**13.7(2) Copy of application to state public defender.** The privately retained attorney shall submit a copy of the application or motion and all attached documents to the state public defender.

**13.7(3) Response of state public defender.** If the state public defender resists the motion in whole or in part, the state public defender shall file a response to the application or motion within ten days of the state public defender's receipt of the application or motion.

**13.7(4) Requirements for authorization and payment.** The court shall not grant the application or motion authorizing all or a portion of the payment to be made from state funds unless the court determines, after reviewing the application, any supporting documents, and any response from the state public defender pursuant to subrule 13.7(3), 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 Iowa Code 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, 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 in rule 493—12.4(13B,815) for the type of case in which the costs are requested.

(2) If the product calculated in subparagraph 13.7(4) "c"(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.

**13.7(5) Opportunity to request a hearing and hearing on the application.** The state public defender shall be afforded reasonable notice and opportunity to respond to the motion and participate in any hearing on the application or motion. 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 or motion by telephone.

**13.7(6) Protection of defense strategy and work product.** In considering and ruling on the application or motion, the court shall order appropriate procedures to protect against disclosure of defense strategy and defense work product to the prosecution, including but not limited to allowance of information or filings, or portions thereof, to be submitted in camera, ex parte hearings, sealing of any transcript or order to avoid such disclosure, protective orders, or other safeguards to protect defense strategy and work product from disclosure to the prosecution.

**13.7(7) *Order on the application.*** 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.

**13.7(8) *Submission of claim for payment to state public defender.*** Following entry of an order allowing costs to be incurred by a privately retained attorney representing an indigent person, the attorney or the service provider may seek payment or reimbursement for costs. The attorney shall submit a claim in accordance with rules 493—12.7(13B,815) and 493—12.8(13B,815). The service provider shall submit a claim in accordance with 493—Chapter 13.

**13.7(9) *Denial of application for noncompliance.*** If the privately retained attorney or claimant seeking payment or reimbursement for costs pursuant to this rule fails to comply with the requirements of this rule, the state public defender may deny all or a part of the costs requested.

**13.7(10) *Applicability of rule.*** This rule applies to payments to witnesses under Iowa Code section 815.4, evaluators, investigators, and certified shorthand reporters, and to other costs incurred by a privately retained attorney in the legal representation of the indigent person. This rule does not apply to payment of costs on behalf of an indigent person represented on a pro bono basis.

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