

**CHAPTER 977  
COURT APPOINTED COUNSEL**

**SUBCHAPTER I  
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**977.101 Right to Appointed Counsel.** A defendant who faces incarceration has the right to counsel at all critical stages of the criminal process. A defendant may make a knowing, voluntary and intelligent waiver of the right to counsel. Unless waived, a defendant who faces incarceration and who has insufficient means to hire counsel is entitled to have counsel appointed by the Court for all critical stages of the criminal process.

**977.102 Appointment Procedure.** When the criteria is met, the Court will utilize the primary attorney through Wisconsin Judicare, who is contracted to accept appointments in the majority of the criminal cases before the Court. For purposes of 977, the primary attorney is not considered a private attorney for public defender services. Additionally, the Court will maintain a list of members of the Ho-Chunk Bar who are certified and agree to accept appointments in the event of a conflict or other event that makes representation by the primary attorney difficult or impossible. After being advised by the Judge of his or her rights regarding appointed counsel, a defendant who wishes appointment of counsel may fill out an affidavit of indigency. A Ho-Chunk Nation Judge will determine whether the defendant qualifies for appointment, and, if so, will appoint an attorney. The Clerk will notify the various persons involved of the appointment.

**977.103 Compensation of Court Appointed Counsel.** A Court appointed lawyer does not necessarily mean a free lawyer. Any defendant who is convicted, either by verdict or upon a plea is subject to having the cost of his or her Court appointed attorney assessed as a part of the costs of Court. The Chief Justice shall determine a uniform rate of compensation for Court appointed attorneys and initiate any necessary contracts or make any directives necessary to effectuate the appointment process.

**977.1035 Requirements for certification.** In order to obtain and retain certification for court appointments under this chapter, an attorney shall satisfy all of the following requirements:

- (1) APPLICATION. The attorney shall submit an application as required by the supreme court.

**(2) LICENSE TO PRACTICE.** The attorney shall be licensed to practice law in a state and shall be a member in good standing of a state bar and the Ho-Chunk Nation.

**(5) COOPERATION WITH INQUIRIES.** (a) An attorney shall cooperate with inquiries from the supreme court or the court's designee regarding the status of appointed cases, and regarding performance or billing in appointed cases.

(b) An attorney who receives a written request to provide a response shall respond in writing and within the deadlines presented with the request. An attorney who fails to do so may be suspended from further appointments until an adequate response is provided.

**977.1037 Provisional certification. (1) APPLICABILITY.** The court may provisionally certify an attorney. All attorneys who have not been previously certified and all attorneys whose certification status is reinstated shall be provisionally certified under this section.

**(2) REVIEW.** (a) After one year of provisional certification, the court shall review the attorney's performance and determine the attorney's future certification status. The court may continue provisional certification, grant non-provisional certification, or discontinue provisional certification and exclude the attorney from any or all certification lists.

(b) The court may require a provisionally certified attorney to provide a letter from at least one judge supporting non-provisional certification.

(c) The court's determination may be based upon, but is not limited to: a review of briefs and client files; billing records; client communications; court records; telephone or personal conferences; and recommendations of judges and attorneys.

(d) The court's determination shall consider the extent to which the provisionally certified attorney has satisfied the supreme court rules of professional conduct for attorneys and the minimum attorney performance standards adopted.

**(3) CONTINUATION.** If provisional certification is continued, the attorney's performance shall be reviewed again under sub. (2) after a period of time set by the court, not to exceed one year.

**(4) APPEAL.** An attorney may appeal the court's decision to discontinue provisional certification and to exclude the attorney from any or all certification lists as provided in s. 977.105.

**(5) PROVISIONAL CERTIFICATION IN LIEU OF DECERTIFICATION.** The court may change an attorney's certification status to provisional certification in lieu of pursuing decertification.

**977.104 Certification lists.** An attorney may be placed on the list to accept an appointment to represent clients in the following case types if the attorney requests appointments in the case type, satisfies the requirements of s. 977.1035, and satisfies the following additional criteria:

**(1) MISDEMEANORS.** For misdemeanor cases, no additional criteria.

**(3) FELONIES.** For a felony case, the attorney has satisfied both of the following criteria within the five years immediately preceding the application for certification:

- (a) Been trial counsel, alone or with other trial counsel.
- (b) Has litigated a significant portion of one completed jury trial, two trials to a court of record, or four testimonial hearings before a court of record, but not including a proceeding to revoke probation, parole or extended supervision.

**(4) UNCLASSIFIED CRIMES.** For a case alleging an unclassified crime, the attorney satisfies the certification criteria for the case type with a corresponding maximum penalty.

**(5) WRITS AND EXTRADITIONS.** For a writ or extradition case, the attorney satisfies the certification criteria for the case type alleged in the extradition request or that is the subject of the writ.

**(7) CHILDREN'S AND JUVENILE COURT CASES ALLEGING BEHAVIOR THAT COULD BE PROSECUTED AS A MISDEMEANOR.** For a case filed under 4 HCC § 3 or similar statute, alleging behavior that could be prosecuted as a misdemeanor in criminal court, the attorney has satisfied either of the following criteria:

- (a) Completed four credits of approved legal education in child and/or juvenile protection.
- (b) Agreed in writing to complete four credits of legal education in child and/or juvenile protection cases during the first year of his or her provisional certification under s. 977.1037.

**(8) JUVENILE COURT OR JUVENILE WAIVER CASES ALLEGING BEHAVIOR THAT COULD BE PROSECUTED AS A CLASS E TO I FELONY.** For a case filed under any juvenile delinquency code, in which the most serious allegation could be a felony if prosecuted in criminal court, or a case seeking to waive a juvenile into criminal court for behavior that could be a felony in criminal court, the attorney has satisfied the criteria in sub. (3) (a) and is certified for cases under sub. (7).

**(12) REVOCATION OF PROBATION, PAROLE OR EXTENDED SUPERVISION STATUS.**

(a) For a proceeding to revoke probation, parole or extended supervision in which the offense of conviction was a misdemeanor, the attorney has satisfied either of the following criteria:

- 1. Completed two credits of approved legal education pertaining to revocation cases.
- 2. Agreed in writing to complete two credits of approved legal education pertaining to revocation cases during the first year of his or her provisional certification under s. 977.1037.

(b) For a proceeding to revoke probation, parole or extended supervision in which the offense of conviction was a felony, the attorney has satisfied both of the following criteria:

- 1. Satisfied the criteria of sub. (3) (a).
- 2. Completed two credits of approved legal education pertaining to revocation cases.

**(13) APPELLATE DIVISION CASES.** (a) *Level one appellate certification.* Level one appellate case certification includes appellate appointments in misdemeanor cases, unclassified crimes, sentencing after revocation cases and paternity cases. For an appeal of a level one appellate case, the attorney has satisfied either of the following criteria:

1. Submitted a brief-in-chief that was filed in any appellate court in the United States within the five years immediately preceding the application for certification and that was reviewed and approved by the court.

2. Completed three credits of approved legal education pertaining to appellate procedure, or its equivalent, including a law school course, clinical program or judicial clerkship, within one year immediately preceding the application for certification.

(b) *Level two appellate certification.* Level two appellate case certification includes appellate appointments in level one cases and in felony cases. For an appeal of a level two appellate case, the attorney has satisfied all of the following criteria:

1. Filed two briefs-in-chief in appellate courts that complied with the local rules of civil procedure, within the five years immediately preceding the application for certification.

2. Submitted one brief-in-chief that satisfied the criteria in subd. 1. and that was reviewed and approved by the court.

3. Conducted three contested trial court hearings, including one evidentiary hearing, within the five years immediately preceding the application for certification.

4. Either has satisfied the criteria of par. (a) 2., or completed six credits of approved legal education pertaining to criminal law within one year immediately preceding the application for certification.

(d) *Juvenile appellate certification.* For an appeal of a case prosecuted under 4 HCC § 3, or similar statute, other than a termination of parental rights case, the attorney has satisfied both of the following criteria:

1. Satisfied the criteria of par. (a).

2. Either has completed four credits of approved legal education pertaining to child and/or juvenile protection, within one year immediately preceding the application for certification; or has been sole trial or appellate counsel of record in five cases filed under 4 HCC § 3, or related statute, within the three years immediately preceding application for certification.

**(14) OTHER SPECIALIZED CERTIFICATION LISTS.** The court may develop other specialized lists under this section in response to changes in substantive or procedural law or developments in forensic science.

**(15) COURT'S AUTHORITY TO WAIVE CRITERIA.** The court may allow an attorney's education, training or experience to substitute for any requirement set forth in s. 977.1035 or this section. The court may waive the requirements in this section to assign a case to an attorney who has a prior pending case with the same client.

**977.105 Appeal of certification decisions.**

(2) Any attorney may appeal the court's certification decision, by mailing a letter of appeal to the court within 30 days of the notice of the decision. The attorney shall state in the letter the certification from which the attorney has been excluded or the decision from which the attorney

intends to appeal. The letter shall state the reasons why the attorney believes the decision was improper.

(3) Upon receipt of an appeal letter, the court shall place the matter on the calendar of the next supreme court session unless that meeting is less than 10 days from the receipt of the appeal letter, in which case the matter may be scheduled for the following meeting. The court shall, at least 10 days before the hearing, inform the attorney of the time and place of the board meeting at which the appeal will be considered.

(4) The court shall transmit to the attorney all material relied upon in reaching the certification decision, including the certification application and all written comments received.

(5) The attorney may submit to the court any material that he or she believes is relevant to the appeal.

(6) The court may deliberate the matter in closed session. The court shall issue a written decision affirming, reversing or modifying the decision. The written decision shall be mailed to the attorney within 20 days after the court's meeting and shall be signed.

**977.107 Voluntary removal.** Any attorney may request to be removed from any certification list, and the court shall remove the attorney. An attorney seeking reinstatement to a certification list after voluntary removal shall submit an application as required by the court.

**977.1075 Inactive status. (1)** An attorney may decline to accept appointments and request in writing to be placed in inactive status. If an attorney has not been appointed in a case for more than one year, the court may place the attorney in inactive status and shall notify the attorney of the change. Except as provided in sub. (2), the court shall return the attorney to active status upon request.

(2) If an attorney has been in inactive status for more than 2 years, and seeks reinstatement to active status, the attorney shall submit an application as requested by the court.

**977.108 Access to files. (1)** The court may not disclose the contents or substance of any review or investigation prior to issuing a decision on certification, unless the attorney who is the subject of the review or investigation first discloses the contents or the substance of the review or investigation.

(2) Only certification lists, court proceedings and decisions under this chapter shall be considered public documents and open to public inspection.

## **SUBCHAPTER II ASSIGNMENT PROCEDURE**

977.201 Definitions.

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977.203 Regular assignment procedure.

977.204 Person's right to refuse specific attorney.

- 977.205 Conflict cases.
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**977.201 Definitions.** In this chapter:

(1) "Emergency assignment" means assignment of counsel outside of normal business hours or when regular assignment will not provide both effective and early representation.

(2) "Regular assignment" means any situation in which counsel is required other than under sub. (1).

**977.202 Emergency assignment procedure.** (1) In any emergency situation the court or court's designee shall evaluate the person for indigency as soon as possible.

(2) In any emergency situation, the court or court's designee shall assign the attorney most readily available to handle the emergency situation, whether that attorney is the primary attorney or a private attorney.

(3) Unless the interests of justice require otherwise, the person shall be provided regular counsel under s. 977.203 and the attorney who provides emergency representation need not continue on the case and need not be permanently assigned.

(4) If it subsequently appears that the person provided emergency representation was not entitled to publicly compensated counsel, that person shall be required to compensate the court for those services at the hourly rate in existence at the time of appointment of counsel and, in no case in excess of the maximum cost determined by the court or legislature to be the value of those legal services.

**977.203 Regular assignment procedure.** (1) The court or court's designee shall contact any person who claims or appears to be indigent, has requested counsel, or has been referred by the court for a court appointed attorney to determine the person's eligibility for appointment of an attorney. The court or court's designee should first contact Wisconsin Judicare for representation, only after Wisconsin Judicare has declined representation may the court or court's designee look to appointment of private counsel for public defender services.

(4) The court or court's designee shall, upon finding a person eligible, immediately contact the primary attorney or private attorney for purposes of assignment of counsel.

(5) The court or court's designee shall advise all persons charged with a crime, detained for purposes of juvenile or involuntary civil commitment proceedings, or otherwise facing a legal proceeding which is within the scope of representation provided by the court appointed counsel,

prior to their initial court appearance, that they have a right to be represented by an attorney in the proceeding if found eligible. The court or court's designee shall advise all persons of the applicable repayment obligation specified in s. 977.601 or 977.605 and, if applicable, the optional prepayment amount specified in s. 977.602. The court or court's designee shall also advise all persons prior to their initial appearance that they have a right to a determination of their eligibility for those legal services.

(6) If the person is eligible for publicly compensated counsel, either the primary attorney or another certified attorney shall be assigned.

(7) If the case is to be assigned to the primary attorney with Wisconsin Judicare, a representative of the court shall notify the attorney in the appropriate office of the primary attorney who will represent that person.

(8) If the case is assigned to certified private counsel, a representative of the court shall immediately contact the attorney whose name appears on the top of the appropriate certification list and assign that attorney to represent that person. If that attorney cannot accept the assignment, the next attorney on the list shall be contacted and the first attorney's name shall be placed on the bottom of the list. If the attorney accepts the assignment, that attorney's name shall be placed on the bottom of the list. Each attorney on the list of the certified court appointed counsel shall be offered an equal opportunity at group assignment of cases. In all other respects, group assignments shall be made in the manner specified for individual assignments.

**977.204 Person's right to refuse specific attorney.**

(1) A person may request that the attorney assigned to represent him or her be discharged and that another attorney be assigned, and the court appointed counsel shall honor such request, provided:

(a) It is the only such request made by the person in that case; and

(b) Such change in counsel will not delay the disposition of the case or otherwise be contrary to the interests of justice.

(2) In the event the court authorizes an attorney to withdraw as counsel, the court or court's designee shall assign the attorney who next appears on the top of the appropriate certification list and place the original attorney's name on the top of that list.

**977.205 Conflict cases.** Any court appointed counsel may not represent more than one person at trial charged in the same case or any client whose interests conflict with any other client.

**977.207 Public representation after case commenced by retained counsel.** (1) If it is necessary for a person to obtain publicly compensated counsel after having retained counsel because of the lack of sufficient funds, the attorney who was originally retained may be assigned and publicly compensated if either:

(a) The court finds that the interests or administration of justice will be severely damaged by a change in counsel; and

1. It appears that the attorney had a reasonable expectation of receiving his or her entire fee when he or she was retained;

2. The necessity for publicly compensating this retained counsel has occurred no more than once in the preceding 12 months; and

3. The client and attorney consent; or

(b) The retained attorney is certified to provide such representation; and

1. It appears that the attorney had a reasonable expectation of receiving his or her entire fee when he or she was retained;

2. The necessity for publicly compensating this retained counsel has occurred no more than once in the preceding 12 months; and

3. The court, client and attorney consent.

(2) Under no circumstances shall the stompensate counsel for services rendered prior to the effective date of assignment by the state public defender.

(3) The method provided under s. 977.4025 shall be used to calculate the compensation by the state public defender of the private attorney appointed under sub. (1).

**977.208 Court's right to review indigency determination.**

(1) Any person determined by the court not to be eligible for publicly compensated counsel may request that the supreme court review the court's indigency determination.

(2) After affording the defendant and a court appointed counsel the opportunity to be heard, the supreme court may order the trial court to provide representation, and the trial court shall assign counsel.

(3) Court-ordered representation shall not preclude a finding of partial indigency and the requirement that the person make partial payment to the court as provided by ch.VI.

**977.209 Special types of representation.** In the following types of cases private local counsel may be assigned from the indicated certification lists:

(1) Probation, parole, or juvenile aftercare revocation cases — from the certified list relating to the original offense.

(2) Extradition cases — from felony or misdemeanor certification list.

(3) Habeas corpus cases (prior to conviction) — from certified list relating to the original offense.

(4) Habeas corpus cases, after conviction — from appellate certification lists or from certification lists relating to the original offense.

(5) Post-conviction motion cases — from appellate certification lists or from certification lists relating to the original offense.

(6) Paternity and contempt cases — from appellate certification lists or misdemeanor or felony certification lists.

(7) Extraordinary remedy cases — from felony, misdemeanor or appellate certification lists, depending on nature of case.

**977.210 Written notice of assignment.** (1) As soon as a regular assignment of counsel is made, the representative of the court or court's designee shall provide the clerk of court having jurisdiction over that case, in writing, the name, address, and telephone number of the attorney providing representation.



(2) In cases assigned to local private counsel, the representative of the court or court's designee shall send that attorney written confirmation of the assignment showing:

- (a) The effective date of the assignment;
- (b) The type of case, including the court and case number (if known);
- (c) The client's full name, address, phone number, and present location;
- (d) Information regarding compensation as provided in ch. IV.

**977.211 Appellate representation.** (1) Appellate representation shall be considered a separate case and reassigned under s. 977.203.

(2) The court or court's designee may assign to independent private counsel any case in which an attorney from Wisconsin Judicare provided trial representation and it is arguable that the client was not afforded effective representation.

(2) If an attorney assigned under these provisions finds it necessary to retain expert assistance, the attorney shall apply to the court for permission to retain that expert assistance. The court may approve the request. In the event of approval, the court shall provide reimbursement for the assistance.

**977.213 Attorney representation of non-indigent clients.** If a court appoints an attorney to represent a non-indigent client, the court shall receive reimbursement from the defendant for the cost of the attorney's representation as follows:

(1) For legal services rendered, at a rate which is in accordance with Ho-Chunk Nation Supreme Court Rules.

(2) For expenses incurred incident to representation such as, but not limited to, costs for travel, witnesses, discovery or experts, at a rate at which an attorney would be reimbursed by the court.

### SUBCHAPTER III INDIGENCY CRITERIA

977.301 General rule.

977.3015 Verification.

977.302 Cost of retained counsel.

977.303 Determination of financial eligibility.

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977.305 Certified statement.

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**977.301 General rule.** An applicant for appointment of counsel by the court shall meet the financial criteria set forth in this chapter.

**977.3015 Verification.** In order to screen the eligibility of applicants and collect amounts owed as payment for representation, the court or court's designee may verify information related to eligibility, including social security numbers, income records, and proof of eligibility for income-based programs.

**977.302 Cost of retained counsel.** (1) The anticipated cost of retaining counsel shall be determined by this schedule:

1st degree intentional homicide \$17,500  
Appellate category I \$9,000  
Appellate category II \$4,500  
Other felony with three year incarceration \$5,000  
Other felony \$2,200  
Felony diversion \$1,500  
Felony delinquency \$1,500  
Revocation \$1,400  
Misdemeanor \$750  
Traffic misdemeanor \$750  
Special proceedings \$750  
Other juvenile \$600

(2) The court shall establish the cost of retaining counsel for any proceeding not covered by the schedule in sub. (1).

(3) The court or court's designee shall periodically review the actual cost of retaining private counsel and report these findings to the legislature. The court may revise the schedule of the anticipated cost of retaining counsel and use for a basis of determining budgets.

(4) The court may consider, in the case of an applicant who is the subject of two or more separate proceedings, the anticipated cost of retaining counsel in multiple proceedings.

**977.303 Determination of financial eligibility.** (1) An applicant is financially eligible for appointment of counsel by the court if both of the following criteria are met:

(a) *Asset limitations.* The anticipated cost of retained counsel under s. 977.302 exceeds the applicant's family assets deemed available under sub. (2) to pay the costs of legal representation.

(b) *Income limitations.* The anticipated cost of retained counsel under s. 977.302 exceeds the applicant's family income deemed available under sub. (3) to pay the costs of legal representation.

(2) The court shall treat assets as available to the person to pay the costs of legal representation if the assets exceed \$2500 in combined equity value except that the court shall exclude the equity value of vehicles up to a total equity value of \$10,000 and shall exclude the first \$30,000 of the equity value of the home that serves as the individual's homestead.

(3) Subject to subs. (4) and (5), the court shall consider income as available to pay the costs of legal representation if the gross income exceeds 200 percent of the federal poverty guidelines,

except that the court cannot consider per capita payments issued by any tribe as income for purposes of this section.

(4) For the purpose of the calculations under this section, the court shall consider the applicant's anticipated income for the time period beginning at the time of the application and continuing for the following time:

- (a) For felony cases, six months.
- (b) For appellate cases, eight months.
- (d) For all other cases, four months.

(5) (a) Notwithstanding the criteria in sub. (1), an applicant is financially eligible for appointment of an attorney by the court if the applicant's only income is derived from one or more of the following sources:

- 1. A Wisconsin works employment position under Wis. Stat. s. 49.148 (1) (a), (b), or (c), or similar program.
- 2. Wisconsin works benefits under Wis. Stat. s. 49.148 (1m), or similar program.
- 3. Supplemental security income for the aged, blind, and disabled under 42 U.S.C. 1381-1383c, relief as defined in Wis. Stat. s. 49.01 (3), Stats., or any other similar needs-based financial assistance program.

(b) Notwithstanding sub. (1), an applicant is financially eligible for appointment of appellate counsel if the applicant has filed a notice of intent to pursue post-conviction relief, indicating that:

- 1. The court has appointed counsel in the case.
- 2. His or her financial circumstances have not materially changed since the date on which the applicant was determined to be eligible for the appointment of counsel in that case.

(6) For the purpose of the calculations under this section, the court shall consider assets and income of the applicant's spouse as the applicant's assets and income, unless the spouse is alleged to be the victim of a crime allegedly committed by the applicant.

(9) The court or court's designee shall annually review the standards specified in this chapter and shall revise these standards as required.

**977.304 Information provided to applicants.** Before asking an applicant for financial information, the court or court's designee shall inform the applicant of all of the following:

(1) The applicant will be required to certify, under s. 977.305 (1), the truthfulness of the financial information provided.

(2) The financial information provided by the applicant is not protected by the attorney-client privilege.

(3) The applicant may be prosecuted for a felony offense if the applicant intentionally provides false information.

**977.305 Certified statement.** (1) All applicants for appointment of counsel by the court shall be required to provide truthful information in a financial evaluation form as required under this chapter. All such applicants shall sign a completed financial evaluation form certifying that the financial information that they have provided is accurate to the best of their knowledge and belief, and that they have not disposed of any assets for the purpose of qualifying for the appointment of counsel.

(2) The court may appoint counsel pursuant to telephone eligibility interviews, in which cases the clients shall sign the financial evaluation form as soon thereafter as practicable.

(3) The court shall retain for 3 years all financial evaluations.

**977.3055 Voluntary termination of employment or disposal of assets.** (1) If an applicant voluntarily terminates employment within the 90 days following the date of application for representation and for the purpose of having the court appoint counsel, the court shall calculate the applicant's income on the basis of the applicant's wages before the voluntary termination of employment.

(2) If an applicant disposes of assets for the purpose of having the court appoint counsel, the court shall count the asset at its fair market value at the time it was disposed of minus the amount of compensation received for the asset.

**977.306 Access to financial evaluations.** (1) Access to financial evaluations of applicants for appointment of counsel by the court may not be granted to any person, except the applicant, a person authorized by the applicant, the court's designee, counsel appointed by the court, or the court in which the applicant has a pending proceeding.

(2) Requests for access to financial evaluations made by a court in which the applicant has a pending proceeding or by any person not specified in sub. (1) shall be referred to the applicant's counsel, if one has been appointed by the court.

(3) If the appointed counsel believes that the financial evaluation contains information that is privileged or confidential, the attorney shall redact the privileged or confidential information before providing the evaluation to the court under sub. (1). If the appointed counsel determines that a requestor is not entitled to access to a financial evaluation, the attorney shall promptly notify the requestor and the court of the denial of the request.

(5) Notwithstanding subs. (1) to (3), and subject to any motion, writ, or other process that the appointed counsel deems appropriate to contest an order or subpoena, the appointed counsel shall comply with any court order or subpoena for production of a financial evaluation.

**977.307 Change of circumstances.** (1) If a client has complied with the requirements of this chapter and qualified financially for appointment of an attorney by the court, the client remains eligible for continued representation in a pending matter notwithstanding a change in financial circumstances.

(2) Notwithstanding sub. (1), the court may adjust the payment amount, for a client whose financial circumstances change during the course of appointed counsel representation.

#### SUBCHAPTER IV PRIVATE ATTORNEY PAYMENT

977.401 Billing form.

977.402 Submission of bill.

977.4025 Compensation for public representation after case commenced by retained counsel.

977.403 Appeal.

977.404 Attorney compensation from client prohibited.

977.405 Private bar emergency rate reduction.

977.406 Annual attorney hours.

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**977.401 Billing form.** At the time a private attorney is assigned a case by the court pursuant to s. 977.203, the court shall furnish the attorney with a billing form to be submitted as the case progresses. The form shall include an itemized listing of the service provided and the expenses incurred.

**977.402 Submission of bill.** Within 6 months of the conclusion of the case, the private attorney shall submit the billing form to the court or court's designee. The court shall promptly review the bill to insure that attorney time billed reflects reasonable attorney practice in such a case, as determined by the court or court's designee, and, except as provided for in s. 977.406, promptly authorize payment at the rate established by the supreme court. The "conclusion of the case" means the conclusion of trial-level representation for trial cases and the conclusion of appellate-level representation for appellate cases. If the bill is not submitted within 6 months of the conclusion of the case, the court is not required to pay the bill promptly.

**977.4025 Compensation for public representation after case commenced by retained counsel.** (1) Except as provided in sub. (3), if privately retained counsel is appointed by the court under s. 977.207 (1), the total amount reimbursed by the court to that attorney may not exceed an amount equal to the total number of hours shown by contemporaneous time records to have been reasonably expended on the case by that attorney multiplied by the rate the court is authorized by supreme court rule to pay private attorneys, less any fees paid to the attorney by or on behalf of the client. The attorney's expenses are not included in the computation of the maximum amount reimbursable by the court.

(2) (a) Fees, if any, paid by or on behalf of the client shall first be applied to the period of legal representation prior to the effective date of assignment by the court, using the number of hours shown by contemporaneous time records to have been reasonably expended on the case by that attorney during that period multiplied by the rate the state public defender is authorized by supreme court rule to pay private attorneys.

(b) Any fees received by the attorney from or on behalf of the client in excess of the amount calculated under par. (a) shall be applied to the period of representation after the effective date of assignment by the court and subtracted from the total amount reimbursable by the court under sub. (1).

(3) The court may, in his or her discretion, use a reasonable hourly rate that is greater than the amount authorized by statute to compute the allowable fees calculated under sub. (2)(a) for the period of representation prior to assignment by the court, if all of the following apply:

(a) The privately retained attorney had a written fee agreement which was signed by the client at the beginning of the attorney's representation;

(b) The attorney had a reasonable expectation of being paid fully for representation of the client at the beginning of the representation, and that expectation is supported by the written fee agreement;

(c) The attorney maintained contemporaneous time records for all time expended in the representation of the client; and

(d) The court finds that the fee paid to the attorney by or on behalf of the client prior to the appointment of publicly compensated counsel was reasonable.

(4) The amount reimbursed by the court may not exceed the amount computed by multiplying the rate the court is authorized by statute to pay times the number of hours actually expended by the attorney in this representation after the effective date of assignment by the court.

**977.403 Appeal.** (1) Any attorney may appeal the court's reduction or denial of any submitted bill. An appeal shall conform with all of the following:

(a) Notice of the appeal is in writing;

(b) Notice is submitted within 30 days of the receipt of the reduced or denied payment; and

(c) Delivery of the notice is by mail or in person to the supreme court.

(2) Failure to submit an appeal notice within 30 days shall bar the appeal.

(3) During the pendency of the appeal the attorney may negotiate the check for the reduced or denied payment without waiver of the right to appeal.

(4) Upon receipt of an appeal letter, the supreme court clerk shall place the matter on the agenda of the next session unless that meeting is less than 10 days from the receipt of the appeal letter, in which case the matter may be scheduled for the following meeting. The supreme court clerk shall, at least 10 days prior to hearing, inform the attorney of the time and place of the hearing at which the appeal will be considered.

(5) The attorney may request that the court reproduce and submit to the supreme court clerk material relevant to the appeal.

(6) The supreme court may deliberate the matter in closed session. The court shall issue a written decision either affirming or modifying the decision of the trial court. The written decision shall be mailed to the attorney within 20 days of the hearing and shall be signed by an officer of the board.

(7) The supreme court's written decision shall constitute findings of fact and conclusions of law.

(8) In the event the supreme court increases the amount to be paid to the attorney, the trial court shall immediately authorize payment and request that the treasurer issue the payment as soon as possible.

**977.404 Attorney compensation from client prohibited.** An attorney representing clients for the public defender program may not solicit, attempt to solicit, or receive compensation from the attorney's client in addition to any compensation which the attorney has received or expects to receive from the court pursuant to this chapter.

**977.405 Private bar emergency rate reduction.**

(1) The supreme court may reduce the payment rates, by not more than \$2 per hour, for either or both of the following:

- (a) For time spent in-court.
- (b) For time spent out-of-court, excluding travel.

(2) The court may not reduce payment rates unless, after reasonable notice and an opportunity for hearing, the court determines that:

(a) A quarterly report prepared, projects that money appropriated for public defender services, will be depleted prior to the end of the current fiscal year or biennium;

(b) A reduction in payment rates would substantially reduce the projected deficit during the current fiscal year or biennium; and

(c) A reduction in payment rates would not significantly decrease the availability of private attorneys to represent indigent clients.

(3) The board may consider other factors, in addition to the prerequisites set forth in sub. (2), in determining whether a rate reduction is appropriate.

(4) The reduction in rates under sub. (1) shall apply only to cases assigned after notice of the court's action is provided to private attorneys who are certified to take public defender cases.

(5) If the court orders a reduction in rates, it shall review the need for a continuing reduction at least once every 2 months after the date of the reduction.

(6) Upon review, the court may, in its discretion, terminate the reduction in rates.

(7) Upon review, the court must terminate the reduction in rates if it is determined that funds, will not be depleted before the end of the fiscal year or biennium.

**977.406 Annual attorney hours.** (1) The court may only reimburse a private attorney for 2080 hours worked in a single calendar year. This rule applies regardless of the year in which the bill for legal services is presented.

(2) An attorney who predicts, based on current and foreseeable workload, that exceptional circumstances will cause his or her billable hours in any calendar year to exceed 2080, may seek advance approval from the court for payment of additional hours. An application for advance approval must be made in writing, and must include an itemization of hours billed in the calendar

year, an itemization of hours worked on pending cases, and the exceptional circumstances justifying payment for excess hours.

(3) An attorney who is denied payment for hours worked under sub. (1) may appeal to the supreme court, pursuant to the procedures set forth in s. 977.403, for a review of the denial of payment. Such appeal must include documentation of the exceptional circumstance justifying payment.

## **SUBCHAPTER V ADVERSARY REPRESENTATION**

977.501 Definitions.

977.502 Adversary representation.

977.503 Prohibition against acting as stand-by counsel.

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**977.501 Definitions.** In this chapter:

(1) "Court appointed attorney" means an attorney who is assigned to a case or any private bar attorney who is appointed to a case by the court.

(2) "Stand-by counsel" means an attorney who has been appointed by a judge to assist him or her in a criminal action because the defendant in the action has elected to proceed pro se.

**977.502 Adversary representation.** (1) Except as provided in sub. (2), all court appointed attorneys shall act as adversary counsel in their representation of indigent clients.

(2) Nothing in this section shall prohibit court or court's designee from authorizing a court appointed attorney to file an amicus brief.

**977.503 Prohibition against acting as stand-by counsel.** (1) No court appointed attorney may act as stand-by counsel in any case.

(2) This prohibition applies whether or not the court appointed attorney was originally providing adversary representation in the case.

## **SUBCHAPTER VI PAYMENT FOR STATE PUBLIC DEFENDER REPRESENTATION**

977.601 Payment for legal representation.

977.6015 Written notice of payment obligation for legal representation.

977.602 Discount option.

977.6025 Determination of ability to pay.

977.603 Multiple related charges.

977.604 Multiple appointments on the same case.

977.6045 Reimbursement from clients with changed circumstances.

977.606 Referral to department of administration.

977.607 Representation regarding payment of attorney fees.

977.608 Reports on status of collections.

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**977.601 Payment for legal representation.** Except as provided in ss. 977.6.2 to 977.6045, a person who is responsible for payment for legal representation provided by the court shall contribute to the cost of the legal representation according to the following schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$7500		
Misdemeanor	\$240		
Revocation	\$240		
Juvenile Felony	\$480		
Felony	\$480		
Other Juvenile	\$240		
Felony Diversion	\$240		
Special Proceeding	\$120		
Appellate/Category I	\$1200		
Appellate/Category II	\$480		

**977.6015 Written notice of payment obligation for legal representation.** (1) The court or court's designee shall provide the following information in writing to all persons subject to payment for legal representation, because they do not meet indigency criteria:

- (a) The optional discount amount in s. 977.602.
- (b) The maximum amount the person may be required to pay under the applicable fee schedule in s. 977.601.
- (c) The schedule for periodic payments if the person does not pay the optional discount amount.
- (d) The procedure to request a determination of ability to pay.

(2) Written notice is sufficient under this section if mailed to the person's last known address.

**977.602 Discount option.** (1) A client may elect to pay, within 60 days of appointment of counsel by the court; otherwise the amount may be deducted from a tribal member's per capita distribution as a debt owed to the nation. The optional discount amount for representation specified in the following schedule:

Type of Case	Amount	Type of Case	Amount
First Degree Intentional Homicide	\$600		
Misdemeanor	\$60		
Revocation	\$60		
Felony	\$60		
Special Proceeding	\$30		
Felony Diversion	\$60		
Appellate I	\$120		
Appellate II	\$60		

(2) If a client pays the optional discount amount under sub. (1), the client is not liable for any additional payment for public defender legal counsel for that case.

(3) The 60 day time period in sub. (1) may be extended for good cause.

**977.6025 Determination of ability to pay.** (1) The court or court's designee shall determine whether persons subject to payment for legal representation have the ability to pay all, or part of, the costs of representation. A person has the ability to pay some amount to these costs if the person has gross income in excess of 200% of the federal poverty guidelines, or has assets treated under s. 977.303 (2) as available to pay the costs of legal representation. The court or court's designee may defer the determination of ability to pay until after the time period for payment of the optional discount amount specified in s. 977.602 has expired.

(2) The court or court's designee may determine that a person has the ability to pay under any of the following circumstances:

(a) The person has gross income exceeding 200% of the federal poverty guidelines, or has assets treated under s. 977.303 (2) as available to pay the costs of legal representation.

(b) The person does not notify the court or court's designee by the date specified in the notice sent to them under s. 977.6015 that they are unable to pay the specified periodic payments.

(c) The person does not comply with a request of the court or court's designee for information necessary to verify their financial circumstances.

(3) The court or court's designee may periodically review a person's ability to pay and may rely upon information obtained from employment and tax records to determine ability to pay. When a person originally unable to pay for legal representation is later determined to have the ability to pay, the court or court's designee shall send notice of a periodic payment schedule to the person's last known address.

(4) This section does not apply to persons subject to reimbursement under s. 977.605 or 977.6045.

**977.603 Multiple related charges.** (1) If multiple related charges for one client are issued on separate complaints, the court may waive the reimbursement fee for cases opened under any of the following circumstances:

(a) The multiple complaints allege the issuance of forged or worthless checks on the same account and within a period of three months or less.

(b) The multiple complaints allege offenses arising out of a single incident.

(2) The reimbursement fee for a case opened based on a reissuance of a criminal complaint previously dismissed is waived.

(3) Waiver of reimbursement fees under this section applies both to the reimbursement fee under s. 977.601 and the optional discount amount under s. 977.602.

**977.604 Multiple appointments on the same case.**

When the same case results in multiple appointments of counsel for a client for any of the following reasons, the client shall not be charged an additional fee for the case:

(1) The case was reassigned for administrative reasons or because of a conflict of interest.

(2) The client requested substitution of counsel.

(3) The client retained a private attorney who withdrew before completion of the case.

(4) The client was granted a new trial after the judgment was vacated on ineffective assistance of counsel grounds.

**977.6045 Reimbursement from clients with changed circumstances.** (1) The court or court's designee may, assess a payment amount in excess of the applicable amount in s. 977.601 if the client is responsible for payment, and after counsel is appointed by the court, does not meet the financial criteria specified in s. 977.303.

(2) In assessing a payment amount under sub. (1), the state public defender shall consider the costs of providing the client with representation and the point in the applicable proceeding at which the client no longer met the financial criteria specified in s. 977.303.

**977.606 Referral to department of justice.** The court or court's designee shall refer to the department of justice a collection account of a person who has been determined able to pay, has not paid the optional discount amount, has been given a monthly payment schedule and has missed a monthly payment by more than 10 days.

**977.607 Representation regarding payment of attorney fees.** The court shall not provide representation to a person on the issue of the payment amount owed to the court.

**977.608 Reports on status of collections.** The court shall submit quarterly reports to the finance committee and to the department of justice regarding the collection of payments ordered. These reports shall include the amount collected and the amount of accounts receivable referred to the department of justice during each reporting period.

## **SUBCHAPTER VII DISCOVERY PAYMENTS**

977.701 Scope of chapter on discovery payments.

977.702 Maximum rates for copies of discovery materials.

977.703 Temporary reduction or suspension of payment when appropriation for discovery is insufficient.

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**977.701 Scope of chapter on discovery payments.**

(1) In this chapter, "discovery materials" means the materials and information that the tribal prosecutor or other prosecuting attorney is required to disclose by ss. 971.23, or by the constitution and laws of this Nation.

(2) This chapter applies to all discovery materials provided to any attorney appointed by the court, primary or private, whether or not the attorney has filed a demand for discovery or made any other formal request for discovery materials.

**977.702 Maximum rates for copies of discovery materials. (1)** The following rates are the maximum fees that the court may pay for copies of discovery materials in any case or proceeding in which the court appoints counsel:

(a) For paper copies of written or printed materials, \$0.20 per single-sided page, or \$0.35 per double-sided page.

(b) For copies of digital videodiscs (DVDs), digital audio recordings, and compact discs (CDs), \$5.00 per disc.

(c) For copies of photographs, \$0.50 per print for a print that is 5x7 inches or less, and \$1.00 per print for all others.

(d) For copies of videocassette recorder (VCR) tapes and audio cassette tapes, \$5.00 per recording.

**(2)** The court may not pay a fee for ancillary expenses related to the provision of discovery materials, including fees for the following:

(a) Labor costs, postage, shipping, equipment costs, or other costs that would result in a fee exceeding the amount specified in sub. (1).

(b) Compiling, preparing, reviewing, or transmitting paper or electronic documents.

(c) Duplicate items, unless specifically requested by the attorney appointed by the court.

(d) Items that the court or court's designee has advised the provider not to include within discovery materials.

**(3)** Except as provided in sub. (2), the supreme court may establish temporary maximum fees for copies of discovery materials in formats not specified in sub. (1). The supreme court shall report any fees established under this subsection to the trial court.

**977.703 Temporary reduction or suspension of payment when appropriation for discovery is insufficient.**

**(1)** When the appropriation that includes funds for payments under this chapter is insufficient to pay for copies of all the discovery materials that the court anticipates will be required during the biennial budget period, the court may temporarily reduce or suspend payments.

**(2)** The court shall notify the affected discovery provider of the nature and anticipated duration of any reduction or suspension of payment under sub. (1).

**(3)** If the appropriation specified in sub. (1) was insufficient in two consecutive fiscal years to pay for all discovery materials that the court required, the court shall report the insufficiency to the supreme court, which may consider promulgating rules to revise the rates in s. 977.702.