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**Rules of**  
**Public Defender Commission**  
**Division 10—Office of State Public Defender**  
**Chapter 2—Definition of Eligible Cases**

<b>Title</b>	<b>Page</b>
<b>18 CSR 10-2.010</b> Definition of Eligible Cases.....	<b>3</b>



**Title 18—PUBLIC DEFENDER  
COMMISSION**

**Division 10—Office of State Public  
Defender**

**Chapter 2—Definition of Eligible Cases**

**18 CSR 10-2.010 Definition of Eligible  
Cases**

*PURPOSE: This rule establishes the types of cases for which the State Public Defender System will provide representation to indigent accused.*

(1) The director and defenders shall provide legal services to an eligible person—

(A) Who is detained or charged with a felony, including appeals from a conviction in a case;

(B) Who is detained or charged with a misdemeanor which will probably result in confinement in the county jail upon conviction, including appeals from a conviction in a case;

(C) Who is detained or charged with a violation of probation or parole;

(D) Who has been taken into custody pursuant to section 632.489, RSMo, including appeals from a determination that the person is a sexually violent predator;

(E) For whom the federal constitution or the state constitution requires the appointment of counsel; and

(F) For whom, in a case in which s/he faces a loss or deprivation of liberty, any law of this state requires the appointment of counsel; however, the director and the defenders shall not be required to provide legal services to persons charged with violation of county or municipal ordinances.

(2) The State Public Defender System shall not represent indigent defendants who have at any time during the pendency of the case retained private counsel. The public defender shall not be available to assume representation where private counsel is allowed by court order to withdraw from representation regardless of the cause for such order of withdrawal unless approved by the director. In certain circumstances, as determined by the director, the State Public Defender System shall provide state assistance in paying for reasonable expert witnesses or investigation expenses for indigent defendants represented by private counsel. This regulation, in whole or part, does not restrict the Missouri State Public Defender System from exercising its authority to contract cases to private counsel as provided by law.

(3) Definition of Case.

(A) For purposes of determining eligibility under section (2), the term “case” shall be

defined as a criminal proceeding, matter, action, or appeal in which private counsel has been retained, and shall include the time from the initial retention of private counsel through sentencing, final judgment, or completion of the direct appeal.

(B) Where the state enters a *nolle prosequi* for any reason, and later refiles the same charge(s), or any charge(s) based on the same set of operative facts as the original charge(s), the refiled proceeding, matter or action shall constitute the same “case” as the prior proceeding, and the public defender shall not provide representation in the refiled proceeding, matter or action.

(4) The State Public Defender System shall not represent a person who faces a loss or deprivation of liberty pursuant to section 632.415, RSMo.

*AUTHORITY: sections 600.017(10), and 600.043, RSMo 2000 and sections 600.042.1(8) and 600.042.3, RSMo Supp. 2007.\* Original rule filed Jan. 9, 1985, effective April 11, 1985. Amended: Filed Feb. 14, 2002, effective Aug. 30, 2002. Amended: Filed Dec. 27, 2007, effective July 30, 2008.*

*\*Original authority: 600.017, RSMo 1982; 600.042, RSMo 1982, amended 1991, 1993, 1995, 1999, 2006; and 600.043, RSMo 1982.*

**Rule Action Notice:** On December 24, 2009, the Missouri Supreme Court, in *STATE ex rel. MISSOURI PUBLIC DEFENDER COMMISSION, J. MARTY ROBINSON, AND WAYNE WILLIAMS, Relators, v. THE HONORABLE KENNETH W. PRATTE, Respondent*, 298 S.W.3d 870 (Mo banc 2009), struck down certain provisions of the rule that permitted the public defender to deny representation to defendants who at anytime during the pendency of their cases retained private counsel. The court invalidated sections 18 CSR 10-2.010(2) and (3).