



Rules of
Public Defender Commission
Division 10—Office of State Public Defender
Chapter 4—Rule for Acceptance of Cases and Payment
of Private Counsel Litigation Costs

Title	Page
18 CSR 10-4.010 Rule for the Acceptance of Cases and Payment of Private Counsel Litigation Costs.....	3



**Title 18—PUBLIC DEFENDER
COMMISSION**

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

**Chapter 4—Rule for the Acceptance of
Cases and Payment of Private Counsel
Litigation Costs**

**18 CSR 10-4.010 Rule for the Acceptance
of Cases and Payment of Private Counsel
Litigation Costs**

PURPOSE: This rule seeks to ensure that cases assigned to the Missouri state public defender system result in representation that effectively protects the constitutional and statutory rights of the accused. This administrative rule applies to all cases for which the Missouri state public defender system is required to provide representation. This rule establishes a uniform procedure and a uniform protocol for determining when a local public defender office has exceeded its maximum caseload and a process to limit the availability of that office to take additional cases after consultation with the court. This rule establishes a uniform process to protect the constitutional rights of criminal defendants represented by private lawyers by authorizing the courts of Missouri to seek payment of litigation expenses from the state public defender. This administrative rule applies to all cases for which the courts of Missouri appoint private counsel under the public defender's protocol process and cases where the public defender contracts with private counsel.

(1) Caseload Protocol.

(A) The State Public Defender Commission shall maintain a caseload standards protocol identifying the maximum caseload each district office can be assigned without compromising effective representation.

(2) Limiting Assignment of Cases.

(A) When the director determines that a district office has exceeded the maximum caseload standard for a period of three (3) consecutive calendar months, the director may limit the office's availability to accept additional cases by filing a certification of limited availability with the presiding judge of each circuit or chief judge of each appellate court affected.

(B) The director shall provide notice to the presiding or chief judge of each affected court that an office is at risk of being certified at least one (1) calendar month prior to limiting the availability of a district office under this rule.

(C) Upon the provision of such notice, the district defender and such other Missouri state public defender (MSPD) management personnel as the director shall designate shall consult with the court and state's attorney to discuss the categories of cases to be designated for exclusion from public defender representation once the district is certified by the director as of limited availability.

(D) Each certification by the director of a district office's limited availability to accept additional cases shall be accompanied by statistical verification that the district office has exceeded its maximum allowable caseload under the public defender commission's caseload crisis protocol for at least three (3) consecutive calendar months.

(E) Upon a district office's certification of limited availability, the district defender shall file with the court a final list of categories of cases that will no longer be accepted by that district office until the office is reinstated to full availability. While an office is certified as of limited availability, no cases on the list of excluded case types shall be accepted by that district office.

(3) Monitoring and Ending Certification of Limited Availability.

(A) Once a district has been certified as of limited availability, the director or his designee shall provide each affected presiding or chief judge with a caseload report each month verifying that the district's availability remains limited under this rule.

(B) The director shall reinstate a district to full availability when case assignments for that district have fallen below the maximum caseload standard for two (2) consecutive months.

(4) Continuing Responsibility While Certification is in Effect.

(A) A district office that has been certified as of limited availability to accept additional cases shall continue to evaluate the indigence of all defendants seeking appointment of counsel and notify the court of its indigence determinations.

(B) The determination of indigence under subsection (4)(A) shall be made by the public defender. Upon motion by the defendant contesting the public defender's finding of non-indigence, the court in which the case is pending shall review and determine the defendant's indigence. If the court finds the defendant indigent, the court shall advise the defendant and defendant's private counsel of the right to request the Missouri state public defender for payment of reasonable and necessary litigation costs as authorized under this rule.

(5) Costs and Expenses of Representation While Certification is in Effect.

(A) If a court appoints a member of the private bar to represent an indigent defendant because the district office is unavailable to accept such case, private counsel may request the Missouri state public defender to pay for reasonable and necessary litigation costs including expert witness fees, deposition fees, and transcript costs to the extent funds are available to do so. Requests for payment of litigation costs must be approved by the MSPD director or the director's designee in advance of costs being incurred.

AUTHORITY: sections 600.017(10), 600.086, and 600.090, RSMo 2000. Emergency rule filed Dec. 18, 2007, effective Dec. 28, 2007, expired June 30, 2008. Original rule filed Dec. 27, 2007, effective July 30, 2008.*

**Original authority: 600.017, RSMo 1982; 600.086, RSMo 1976, amended 1982, 1993; and 600.090, RSMo 1976, amended 1982, 1986.*

Rule Action Notice: On December 24, 2009, the Missouri Supreme Court, in *STATE ex rel. MISSOURI PUBLIC DEFENDER COMMISSION, J. MARTY ROBINSON, AND KEVIN O'BRIEN, Relators, v. THE HONORABLE GENE HAMILTON and THE HONORABLE GARY OXENHANDLER, Respondents*, 298 S.W.3d 870 (Mo banc 2009), ruled that the public defender commission may not limit availability of public defender district offices by category of case, [that] "the rule authorizes the public defender to make the office unavailable for any appointments until the caseload falls below the commission's standard." Subsection 18 CSR 10-4.010(2)(E) is voided by the court's ruling.