

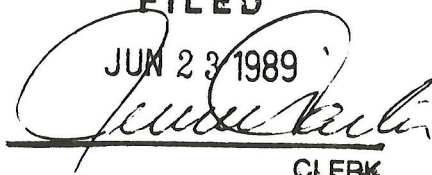
IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1989

IN THE MATTER OF THE AMENDMENTS )  
OF RULE 6, W.R.Cr.P., RULE 6(b), )  
W.R.Cr.P.C.C. and RULE 6(b), )  
W.R.Cr.P.J.C. )

IN THE SUPREME COURT  
STATE OF WYOMING  
FILED

JUN 23 1989



CLERK

ORDER AMENDING RULES

The court having deemed it necessary and proper to amend the following court rules to provide a standard of indigency in all courts pursuant to W.S. 7-6-103(c), it is

ORDERED that Rule 6(b), W.R.Cr.P. be, and it is hereby, amended to read as follows:

Rule 6. Right to assignment of counsel.

(b) Assignment procedure. -- The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by ~~local~~ THE rules of THE court ESTABLISHING A STANDARD FOR INDIGENCY ADOPTED PURSUANT TO W.S. 7-6-103(c), ATTACHED HERETO AND INCORPORATED HEREIN AND established pursuant TO LAW ~~thereto~~.

FURTHER ORDERED that Rule 6(b), W.R.Cr.P.C.C. be, and it is hereby, amended to read as follows:

Rule 6. Right to assignment of counsel.

(b) Assignment procedure. -- The procedures for implementing the right set out in subsection (a) hereof shall be those provided by law and by ~~local~~ THE rules of the court ESTABLISHING A STANDARD FOR INDIGENCY AS SET FORTH IN RULE 6(b), W.R.Cr.P., AND established pursuant ~~thereto~~ TO LAW.

FURTHER ORDERED that Rule 6(b), W.R.Cr.P.J.C. be, and it is hereby, amended to read as follows:

Rule 6. Right to assignment of counsel.

(b) ~~Local rules~~, ASSIGNMENT PROCEDURE. -- The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by ~~local~~ THE rules of the court ESTABLISHING A STANDARD FOR

INDIGENCY AS SET FORTH IN RULE 6(b), W.R.Cr.P., AND established pursuant ~~thereto~~ TO LAW.

FURTHER ORDERED that the foregoing amended rules be published in the Advance Sheets of the Pacific Reporter and thereafter in the Wyoming Reporter; that said amended rules shall be effective upon publication in the Advance Sheets of the Pacific Reporter; and there upon be spread at length on the journal of this court.

Dated this 23 day of June, 1989.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'G. Joseph Cardine', written over a horizontal line.

G. Joseph Cardine  
Chief Justice

## RULES ESTABLISHING STANDARD FOR INDIGENCY

Pursuant to W.S. 7-6-103(c), the following rules are promulgated establishing a standard for indigency:

### (a) Appointment of counsel.

(1) In every criminal case in which the defendant is charged with a felony or a misdemeanor, or with juvenile delinquency by the commission of a act which, if committed by an adult, would be such a felony or misdemeanor, or with a violation of probation, the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to arrange for the services of an attorney. The court shall initially appoint the public defender's office to represent the defendant, if satisfied that the defendant is financially unable to obtain counsel, after an appropriate hearing. The court shall appoint separate counsel for co-defendants having an interest that cannot be properly represented by the same counsel or when cause is shown.

(2) When counsel is appointed he shall represent the defendant at every stage from initial appearance through appeal; however, the appellate section of the public defender's office will likely handle the appeal.

(3) Discretionary appointments of any person subject to revocation of parole and in custody may be entitled counsel pursuant to the Wyoming statutes provided that such a person is financially unable to obtain representation.

(4) The appointment of counsel for juveniles is governed by W.S. 14-6-222 and fees, costs and expenses for juveniles is governed by W.S. 14-6-235.

### (b) Eligibility for representation pursuant to W.S. 7-6-103(c).

(1) Any person financially unable to obtain adequate representation who is charged with a felony or misdemeanor other than a petty offense or with juvenile delinquency is entitled to the appointment of counsel.

(2) The Sixth Amendment to the Constitution of the United States requires the appointment of counsel for any defendant in which he faces loss of liberty or any person facing a parole termination where the Wyoming statutes may require the appointment of counsel. The appointment of counsel may be necessary for those persons facing charges who may face the loss of their liberty.

(3) Counsel should be provided to a person as soon as



feasible after he is taken into custody or when he appears before the court at this initial appearance or when he is formally charged or when he otherwise becomes entitled to counsel, whichever occurs first. The determination of whether a person is eligible for the appointment of counsel is a judicial function to be performed by the appropriate judge or justice. The court should obtain such facts as to determine indigency and the defendant's financial status. Whenever practicable, fact-finding should be done prior to the defendant's first appearance in court. The determination of eligibility should ordinarily be made by the judge or justice at the defendant's first appearance in court or at such time after appointment of an attorney may be required, but only after making appropriate inquiries regarding the defendant's financial situation.

(c) **Standards for eligibility.**

(1) A person is financially unable to obtain counsel if his net financial resources and income are insufficient to enable him to obtain qualified legal representation (counsel). In determining whether such insufficiency exists, consideration should be given to:

(A) The cost of providing the person and his dependents with the necessities of life;

(B) The apparent financial condition of the defendant as it relates to the offenses charged.

(2) Any doubts as to a person's eligibility for the appointment of counsel should be resolved in his favor and erroneous determination for eligibility may be corrected at any time. The person requesting the appointment of counsel shall submit an affidavit under oath of his financial assets and liabilities and any financial statements made or determined at a later time should be subject to review by the court. A separate order of appointment shall be entered as part of the record by the court for every defendant. In any case in which the appointment of counsel has been made and the court subsequently finds that the person is financially able to obtain counsel, such appointment should be terminated by court order. A waiver of appointed counsel may be made following a hearing by the court.

(3) If at any time after appointment, counsel obtains information that a client is financially able to make payment in whole or in part for legal services in connection with his or her representation and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court and ask that his appointment be terminated.

(4) Pursuant to the Administrative Notice Number 88-2,

the following order of the supreme court is adopted:

To be in conformance with the provisions of the Wyoming Public Defender Act, W.S. 7-6-101, et seq., the county courts shall provide for the appointment of a public defender or private counsel only in those cases in which a needy person is charged with a serious crime as defined by W.S. 7-6-102.

(d) Compensation and expenses of appointed counsel.

(1) Private counsel designated by the public defender's office or by the court may be compensated at a rate not to exceed fifty dollars (\$50.00) per hour for the time expended in court and a rate not to exceed twenty-five dollars (\$25.00) per hour for time reasonably expended out of court in preparation or research. The hourly rates of compensation are designated and intended to be maximum rates and to be treated as such. Vouchers are available in the public defender's office and court appointment and memorandum detailing the services provided are necessary to obtain payment. The memorandum shall be both narrative and statistical and should provide justification for the hours expended. Counsel shall make known to the court and to the public defender's office for those cases which will be extended or complex. The following criteria may be helpful in this regard:

- (A) The responsibilities involved in measuring the magnitude and importance of the case;
- (B) The manner in which the duties were performed;
- (C) The type of offense;
- (D) Special requirements in knowledge, skill, efficiency, professionalism and judgment; and
- (E) Any extraordinary pressure or time which could become a factor when services are rendered.

(2) If travel is necessary as part of the attorney's compensation, the public defender's office should be notified for those special conditions. Travel expenses are to be paid according to the state per diem rates. Transcripts and other expenses of a professional nature in major felony cases must have prior approval from the public defender's office.

These rules were amended to include the suggestions of the Wyoming Supreme Court in a letter dated May 17, 1989. Compensation was set by the public defender pursuant to statute and was not approved by the Wyoming Supreme Court. The court took no part in Section 4 -- Compensation and expenses of appointed counsel.

