



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Law and Justice Interim Committee 65th Montana Legislature

SENATE MEMBERS

DIANE SANDS--Chair
JEN GROSS
MARGARET (MARGIE) MACDONALD
KEITH REGIER
SCOTT SALES
NELS SWANDAL

HOUSE MEMBERS

JIMMY PATELIS--Vice Chair
JESSICA KARJALA
GEORGE KIPP III
RYAN LYNCH
LOLA SHELDON-GALLOWAY
BARRY USHER

COMMITTEE STAFF

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
LAURA SHERLEY, Secretary

TO: Committee Members
FROM: Julianne Burkhardt, Staff Attorney
RE: Administrative Rule Activity
DATE: September 7, 2017

Office of the State Public Defender (OPD)

MAR 2018 Issue No. 4 (February 23, 2018) MAR Notice No.2-69-573

The OPD issued a NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL regarding the amendment of ARM 2.69.201, 2.69.203, and 2.69.301 and the repeal of ARM 2.69.202 and 2.69.601 addressing model rules, definitions, determination of indigency, and reasonable compensation. A public hearing is scheduled for March 16, 2018, at 1:00 p.m. at the Office of the State Public Defender, 44 W. Park St. Butte, MT.

In ARM 2.69.201 the OPD seeks to modify its existing Model Procedural Rules by adopting and incorporating by reference the Attorney General's Model Procedural Rules found in ARM 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233 which provide model rules for contested case hearings and declaratory rulings. Also in ARM 2.69.201, the OPD seeks to adopt the Secretary of State's Model Rules found in ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313. These rule provide requirements for rulemaking. The authority allowing agencies to adopt and incorporate by reference model rules is found in 2-4-202, ARM.

In ARM 2.69.203 the OPD seeks to provide detailed definitions of "income" and "substantial hardship" which were not defined previously. Pursuant to 47-1-105, MCA, a person is considered presumptively indigent if their household income is 133% of the federal poverty level. If the person does not qualify presumptively, the OPD determines whether it would be a "substantial hardship" to the applicant or the members of their household if they are required to retain private counsel. The definition of "income" utilized by the OPD is quite broad and captures numerous sources of funds which come into a household including wages, government assistance benefits and workers' compensation benefits while excluding child support. The definition of "substantial hardship" is even more broad including not only gross household

income but also the liquidity of assets, severity of the crime charged, cost of counsel and whether the applicant is incarcerated.

In ARM 2.69.301, the OPD seeks to amend the process for eligibility determinations to comply with the changes made to 47-1-111, MCA, in the 2017 legislative session. According to 47-1-111(6), MCA, the Central Services Division of the OPD is required to ensure that eligibility determinations are done in a consistent manner throughout the state. In addition, when applicants seek counsel based on a substantial hardship, all applications must be verified..

The OPD seeks to repeal ARM 2.69.202 because the procedure for issuance of a declaratory ruling covered by 2.69.202 is now addressed in 2.69.201.

The OPD seeks to repeal ARM 2.69.601 because 47-1-216, MCA, (renumbered 47-1-121, MCA) was amended by the 2017 Legislature to remove the requirement that reasonable compensation for contract attorneys be established by rule making this rule unnecessary. Under the current version of 47-1-121(7), MCA the director of the OPD has the responsibility of establishing reasonable compensation for contract attorneys.

CI0106 8068jbfa