

CHAPTER 225

STATE PUBLIC DEFENDER

HOUSE BILL 99-1350

BY REPRESENTATIVES McPherson, Mitchell, Morrison, Stengel, T. Williams, George, and Spradley;
also SENATOR Blickensderfer.

AN ACT

CONCERNING REPRESENTATION OF CRIMINAL DEFENDANTS BY STATE-FUNDED ENTITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 21-2-103 (1) (a) and (2), Colorado Revised Statutes, are amended, and the said 21-2-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

21-2-103. Representation of indigent and partially indigent persons. (1) On and after January 1, 1997, the office of alternate defense counsel shall provide legal representation in the following circumstances:

(a) Cases involving conflicts of interest for the state public defender as determined ~~by the court having jurisdiction over the case~~ PURSUANT TO SUBSECTION (1.5) OF THIS SECTION;

(1.5) (a) TO REQUEST WITHDRAWAL FROM A CASE DUE TO A CONFLICT OF INTEREST, THE STATE PUBLIC DEFENDER SHALL SUBMIT TO THE COURT HAVING JURISDICTION OVER THE CASE A MOTION SPECIFICALLY DESCRIBING THE NATURE OF THE CONFLICT OF INTEREST. IF THE STATE PUBLIC DEFENDER DETERMINES THAT ETHICAL OBLIGATIONS PREVENT A SPECIFIC DESCRIPTION OF THE NATURE OF THE CONFLICT OF INTEREST, THE STATE PUBLIC DEFENDER SHALL CITE ANY APPLICABLE LEGAL AUTHORITY FOR THE DETERMINATION, AND THE PORTION OF THE MOTION THAT SPECIFICALLY DESCRIBES THE NATURE OF THE CONFLICT SHALL BE SEALED. IN THE EVENT AN ISSUE ARISES LATER CONCERNING WHETHER AN ACTUAL CONFLICT EXISTED, THE SEALED PORTION OF THE MOTION MAY BE OPENED AND EXAMINED BY THE ORIGINAL JUDGE OR BY ANOTHER JUDGE IF NECESSARY TO PREVENT THE VIOLATION OF AN ETHICAL OBLIGATION.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) UPON REVIEW OF THE MOTION, THE COURT SHALL DETERMINE WHETHER A CONFLICT OF INTEREST EXISTS THAT WOULD REQUIRE WITHDRAWAL OF THE STATE PUBLIC DEFENDER AND APPOINTMENT OF THE ALTERNATE DEFENSE COUNSEL.

(c) FOR PURPOSES OF THIS ARTICLE, A "CONFLICT OF INTEREST" MAY INCLUDE, BUT NEED NOT BE LIMITED TO, CIRCUMSTANCES IN WHICH THE STATE PUBLIC DEFENDER REPRESENTS A CODEFENDANT OR A PERSON WHO IS A WITNESS IN THE CASE OR OTHER CIRCUMSTANCES IDENTIFIED IN THE COLORADO RULES OF PROFESSIONAL CONDUCT OR OTHER RULES OF CIVIL PROCEDURE AS CREATING A CONFLICT OF INTEREST. CASE OVERLOAD, LACK OF RESOURCES, AND OTHER SIMILAR CIRCUMSTANCES SHALL NOT CONSTITUTE A "CONFLICT OF INTEREST".

(d) IF THE COURT ALLOWS WITHDRAWAL OF THE STATE PUBLIC DEFENDER AND APPOINTS THE ALTERNATE DEFENSE COUNSEL AND IT IS LATER DETERMINED THAT NO GENUINE CONFLICT OF INTEREST EXISTED, THE OFFICE OF THE STATE PUBLIC DEFENDER SHALL REIMBURSE THE OFFICE OF THE ALTERNATE DEFENSE COUNSEL FOR THE COST OF THE REPRESENTATION.

(2) In cases involving conflicts of interest for the state public defender, the determination of indigency shall be made by the state public defender in accordance with section 21-1-103. ~~Upon notification to the court by the state public defender of the conflict of interest, the court shall appoint the office of alternate defense counsel which shall provide representation for the indigent person.~~

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 24, 1999