

IN THE COURT OF APPEALS OF IOWA

No. 2-506 / 11-1475
Filed July 25, 2012

STATE PUBLIC DEFENDER,
Plaintiff-Appellant,

vs.

**IOWA DISTRICT COURT FOR
WAPELLO COUNTY,**
Defendant-Appellee.

Certiorari to the Iowa District Court for Wapello County, Kirk A. Daily,
District Associate Judge.

The State Public Defender challenges the legality of district court orders
requiring the payment of an attorney's fee claims. **WRIT ANNULLED.**

Samuel P. Langholz, State Public Defender, and Rebecca J. Hanson,
Assistant Public Defender, for appellant.

Ryan J. Mitchell of Orsborn, Milani, Mitchell & Goedken, L.L.P., Ottumwa,
for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ.

VAITHESWARAN, P.J.

In this consolidated proceeding, the state public defender challenges the legality of district court orders requiring the payment of an attorney's fee claims.

I. Background Facts and Proceedings

Attorney Ryan Mitchell was appointed to represent two defendants in their criminal cases. The first defendant failed to appear for a sentencing hearing, and warrants were issued for his arrest. The second defendant failed to appear for trial, and a warrant was similarly issued for his arrest.

Mitchell moved to withdraw from both cases, and the district court granted the motions. Mitchell then submitted fee claims to the state public defender, the agency statutorily charged with processing such claims. See Iowa Code § 13B.4 (2011) (enumerating duties and powers of the state public defender). The public defender denied the claims on the ground they were not filed within forty-five days of the dates of service.

Mitchell sought district court review of the denials. He contended the claims were timely under Iowa Code section 815.10A(2) because they were filed within forty-five days of the withdrawal orders. The public defender resisted, arguing the claims were untimely under Iowa Administrative Code rule 493-7.1 because they were filed more than forty-five days after the issuance of the warrants. The district court sided with Mitchell, stating: "The court having reviewed those sections determines that section 815.10A(2) is controlling and that the fee is timely if filed within 45 days of a withdrawal order if it was earlier than sentencing, acquittal or dismissal."

The state public defender filed notices of appeal. The Iowa Supreme Court consolidated the cases and transferred the appeals to this court.¹

Our review is on error. *State Pub. Defender v. Iowa Dist. Ct. for Union Cnty.*, 744 N.W.2d 321, 321 (Iowa 2008).

II. Analysis

Iowa Code section 13B.4(4)(c)(2)(a) authorizes the public defender to review claims for payment of indigent defense costs and deny claims that are not “timely.” Section 815.10A(2), in turn, address the timeliness of claims as follows: “Claims for compensation and reimbursement submitted by an attorney . . . are not considered timely unless the claim is submitted to the state public defender within forty-five days of a withdrawal order, sentencing, acquittal, or dismissal, whichever is earliest, in a criminal case”

The state public defender contends section 815.10A(2) does not resolve the question of whether Mitchell’s claims were timely because, in its view, “[t]his statute does not define when a claim is timely, it merely states that the claim is *not* timely in certain circumstances.” The defender refers us to its rule on the subject, which it asserts clearly answers the timeliness question. That rule states a “timely claim” means “a claim submitted to the state public defender for payment within 45 days of the date of service.” The rule defines “date of service” as follows:

[F]or adult fee claims, the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of mistrial, *the date a warrant was issued for the client*, or

¹ The proper mode of review is by petition for a writ of certiorari. See *State Pub. Defender v. Iowa Dist. Ct. for Warren Cnty.*, 594 N.W.2d 34, 36 (Iowa 1999). We will treat the notices of appeal as petitions for writ of certiorari. See Iowa R. App. P. 6.108.

the date of a court order authorizing the attorney's withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or the issuance of a warrant.

Iowa Admin. Code r. 493-7.1 (emphasis added). Under this rule, the public defender asserts the time for starting the forty-five-day period is "the date a warrant was issued," rather than the date Mitchell was allowed to withdraw.

The state public defender accurately applies the rule. The problem, in our view, is that the rule does more than implement chapter 815; it adds language that is absent from the statute. Notwithstanding the public defender's vigorous argument to the contrary, section 815.10A(2) plainly addresses the timeliness of fee claims and plainly states that fee claims must be submitted within forty-five days of "the withdrawal order, sentencing, acquittal, or dismissal, whichever is earliest." See *State Pub. Defender v. Iowa Dist. Ct. for Johnson Cnty.*, 663 N.W.2d 413, 415 (Iowa 2003) (stating if statutory language is plain and the meaning clear, we do not search for legislative intent beyond the express terms of the statute). The statute says nothing about warrants. By adding the warrant language, rule 493-7.1 impermissibly expands the scope of the statute. The Iowa Supreme Court has invalidated similar administrative rules. See, e.g., *Simmons v. State Pub. Defender*, 791 N.W.2d 69, 88 (Iowa 2010) (invalidating rule establishing a flat fee for appellate work performed by contract attorneys).

As it is undisputed that Mitchell filed his fee claims within forty-five days of the withdrawal orders, which was the earliest of the proceedings specified in section 815.10A(2), the district court did not err in concluding that his fee applications were timely.

WRIT ANNULLED.