



Wisconsin State Public Defender

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TO: SPD Managers and Appointments Staff
FROM: Katie York, Deputy State Public Defender
RE: 2023 Private Bar rate increase planning
DATE: Wednesday, May 31, 2023

Included in the budget proposal currently pending in the legislature is an item that increases the rate of reimbursement for appointments to the private bar to \$100 per hour and the rate of travel reimbursement to \$50 an hour for cases appointed on or after July 1, 2023. The following memorandum outlines several issues related to the rate increase.

If the budget bill is enacted *after* July 1, 2023, it is important to note that the increased rate will apply to appointments made July 1 or after regardless of the effective date of the budget bill. It is also important to note that as of the date of this memorandum the budget bill still requires a final vote by the legislature and signature by the Governor. This memorandum assumes the final budget will not change from the current proposal. If there is a change an updated memorandum will be distributed.

This memorandum seeks to address two significant issues: 1) the ability to make appointments prior to July 1, 2023; and 2) the currently pending cases in which an SPD eligible client received an attorney at county expense.

First, regarding efforts to appoint cases prior to July 1, 2023, SPD will continue to make all diligent efforts to appoint cases but anticipates that appointments may be declined in the time leading up to the rate increase. There are two primary options during this time:

1. Identify a private bar attorney willing to accept the appointment, but make it effective with the filing of an Order Appointing Counsel on July 1, 2023.
2. Appoint the attorney immediately for the preliminary hearing phase of the case and then re-appoint the full case on July 1, 2023.

Second, for current cases where an individual was appointed counsel at county expense, SPD can convert those appointments from the county to the SPD when the new rate takes effect. To accomplish this we will first need to identify the cases in which the court appointed an attorney at county expense for an SPD eligible client. SPD does not have the ability to track or identify eligible cases for which the county has appointed an attorney.

In converting the appointment, SPD seeks to avoid or minimize any impact to the client or other parties in the case. SPD, in every possible circumstance, will retain the same counsel appointed by the court. The process to convert the appointment is at the discretion of individual judges. Here are some proposed options:

1. Upon notification by the court that the case was originally made as a county appointment, SPD will submit a new Order Appointing Counsel which will supersede any existing appointment order.
2. The attorney appointed at county expense will submit a formal Motion to Withdraw to be followed as quickly as practical by an SPD Order Appointing Counsel. To minimize disruption, the court may wish to consult the local SPD office to confirm that the same attorney is able to be appointed at SPD expense prior to granting the motion to withdraw.

There are several important factors related to the conversion of these appointments.

1. SPD is not able to reimburse for actual costs incurred prior to conversion to an SPD appointment.
2. SPD may require the client to be re-evaluated for financial eligibility.
3. SPD will need information related to any upfront fee that the court imposed for county appointed counsel to avoid duplicating client payment for representation.
4. SPD will request copies of any bills submitted by the attorney to the county to avoid duplicate billing in a converted appointment. This does not require action by the court or county.

Questions regarding individual client cases can be directed to the local SPD manager or the Assigned Counsel Division.