

10/5/2021

# Assigned Counsel Division (ACD)

## Manual

WISCONSIN STATE PUBLIC DEFENDER



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## **I. Assigned Counsel Division**

The Assigned Counsel Division (ACD), located in the Madison administrative office of the Wisconsin State Public Defender (SPD), is responsible for contracting with outside counsel to represent indigent clients. The SPD is committed to the continuous improvement of our partnership with the private bar.

Attorneys wishing to be assigned public defender cases should review the rules for certification, billing terms and conditions, and the Attorney Performance Standards. Using your legal training to protect the rights of people who do not have the resources to protect themselves is very rewarding. In building and maintaining a practice, SPD cases take the lawyer into the courtroom more than any other type of case.

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## II. Maintaining Certification

### A. Minimum Attorney Performance Standards

The following are the minimum attorney performance standards for an SPD appointed attorney. These standards reflect the SPD mission to provide high quality legal service and require an attorney to do more than merely comply with Supreme Court Rules (SCR) and stay above the threshold for ineffective assistance of counsel. Except for those rules which reference issues directly related to the private bar, e.g. certification, these standards mirror the same expectation the SPD has for its staff attorneys.

“Appointed attorney” refers to an attorney in private practice who the SPD has certified and appointed to represent its clients.

#### 1. General

- a) An appointed attorney shall comply with all SCR, including both the Rules of Professional Conduct in [Wis. SCR § 20](#) and the Standards of Courtesy and Decorum in [Wis. SCR § 62](#).
- b) An appointed attorney shall comply with local court rules in the counties in which s/he practices.
- c) An appointed attorney shall comply with statutes, administrative code rules, and SPD policies and procedures related to public defender appointments, certification and billing.
- d) In all cases, including, but not limited to, those under [Wis. Stats. § 48, 51](#) and [55](#), an appointed attorney shall function as adversary counsel.
- e) An appointed attorney shall maintain an up-to-date client file, detailing all action taken on the case and including copies of all relevant court filings and other materials. The file is the property of the client and must be tendered to the client upon request at the close of the case unless the file is being forwarded to successor counsel. An attorney should print the electronic court record for the client file or should maintain electronic records in a format that allows the attorney to print documents for the client file after the case is closed. Attorneys lose access to the e-filing system once a case is closed; therefore, attorneys should not rely on the court system for record management. For recordings and other relevant materials not susceptible to printing, the attorney should take reasonable steps to ensure that the materials are available and accessible in a format that can be delivered to the client or successor counsel.
- f) An appointed attorney shall retain all client files not turned over to the client or successor counsel for a minimum of six years and follow all SCR regarding the disposal of client files and property.

- g) An appointed attorney shall cooperate fully with successor counsel. This includes promptly delivering the client file and answering questions about the earlier representation, consistent with ethical obligations.
- h) An appointed attorney shall cooperate with inquiries from the SPD regarding: the status of appointed case(s); performance issue(s); or billing issue(s) for payment of legal services rendered.

### **Competence and Diligence**

- a) An appointed attorney shall accept only those cases for which s/he can provide competent representation. Certification by the SPD for a particular case type or category is not the same as competency to provide services in any individual case.
- b) An appointed attorney shall personally act as an advocate for the client and provide zealous, effective and high-quality representation to the client at all stages of proceedings. An appointed attorney may arrange for another certified attorney to provide coverage of a routine appearance in the event a scheduling conflict that cannot be avoided.
- c) An appointed attorney shall know to a reasonably proficient standard all relevant Wisconsin substantive law and procedure and keep abreast of developments in substantive and procedural law.
- d) An appointed attorney shall meet all statutory and court-imposed deadlines.
- e) An appointed attorney shall meet promptly with the client, in person, whether in custody or not. Ordinarily, the first meeting with the client should take place as soon as practicable after appointment. In appellate matters, an in-person meeting may be delayed until the attorney has had a chance to review the file and transcripts.

### **Communication**

- a) An appointed attorney shall explain the role of attorney and attorney-client relationship, determine background information and solicit the defendant's version of the facts.
- b) An appointed attorney shall consult with the client as often as necessary to elicit the information necessary to build a defense.
- c) An appointed attorney shall keep the client reasonably informed about the status of his/her case, defense strategies, tactical choices, consequences of conviction, and explain the nature and purpose of court proceedings.
- d) An appointed attorney shall promptly respond to the client's reasonable requests for information, including providing a copy of any motion or brief filed in the client's case upon request of the client.
- e) An appointed attorney shall present and consult with the client about all plea negotiations and offers of settlement.
- f) An appointed attorney shall explain matters to the extent reasonably necessary to allow the client to make an informed decision regarding the case.

### **Practice Standards – Trial**

- a) An appointed attorney shall actively represent an in-custody client on the issue of release throughout the case.
- b) An appointed attorney shall review and examine the complaint and accompanying papers, information or other charging document and determine the sufficiency of the same.
- c) An appointed attorney shall obtain and review all discovery materials, including but not limited to police reports, all written or recorded statements of the

- defendant, names of witnesses to any written or recorded statements, a copy of the client's criminal record, if any, and statements of witnesses, a copy of the criminal record of prosecution witnesses; and examine physical evidence and/or reports of physical evidence.
- d) An appointed attorney shall arrange for the client to review discovery materials in so far as it is necessary for the client to make informed decisions about his/her case. An attorney should provide the discovery necessary to properly inform the client.
  - e) An appointed attorney shall cause an investigation of the facts including attempting to interview appropriate defense or prosecution witnesses.
  - f) An appointed attorney shall analyze all legal issues presented in the case. In consultation with the client, an attorney shall decide which issues have merit and make strategic decisions about issues to be pursued. An appointed attorney shall then file and argue appropriate motions.
  - g) An appointed attorney shall utilize experts, investigators, interpreters and other professional support where appropriate.
  - h) An appointed attorney shall consider all appropriate available diversion, treatment court, and other alternatives to prosecution.
  - i) An appointed attorney shall prepare the case for trial or hearing, as appropriate, and advise the client of the procedures to be followed and his/her rights.
  - j) An appointed attorney shall prepare a plan or argument for sentencing for the client if the client is convicted, and advise the client of the sentencing procedures.
  - k) An appointed attorney shall inform the client of his/her right to appeal, file a notice of intent to pursue post-conviction relief if requested to do so by the client, and make a proper referral to the SPD appellate division.
  - l) An appointed attorney shall notify the local SPD office as soon as the attorney moves to withdraw. If in writing, the attorney shall provide the local SPD office with a copy of the written motion prior to the hearing on the motion to withdraw.
  - m) An appointed attorney assigned to handle cases involving the revocation of probation, extended supervision or parole, rescission of parole, and re-confinement shall do all of the following:
    - i. obtain and review all DOC documents relevant to the administrative or court hearing
    - ii. where appropriate, review material held by the DOC including but not limited to the client's file held by his/her agent
    - iii. review information regarding the offense(s) underlying the supervision
    - iv. coordinate representation with any attorney handling a new criminal matter for the same client
    - v. insure that issues regarding sentence structure and sentence credit are properly resolved
    - vi. represent the client through the administrative hearing
    - vii. file an administrative appeal unless, after consultation with the client, the client consents to foregoing the administrative appeal
    - viii. review the decision on the administrative appeal and determine if grounds exist for filing a Writ of Certiorari; advise the client whether viable grounds to file a Writ of Certiorari exist, and consult with the client regarding whether to pursue such a Writ if the attorney has determined there are viable grounds; pursue a Writ of Certiorari when appropriate.
    - ix. represent the client in the related re-confinement hearing or sentencing after revocation, unless successor counsel is appointed.

## **Professionalism and Ethics**

- a) An appointed attorney shall treat the client, the client's family, and other members of the public with courtesy and respect. An appointed attorney should be mindful of the rules related to confidentiality and loyalty to the client when speaking with family members and others.
- b) An appointed attorney shall maintain civility and respect towards the courts, courthouse staff, prosecutors, law enforcement, local public defender office staff, and members of the public.
- c) An appointed attorney shall maintain a system of conflict checks.
- d) An appointed attorney shall maintain his/her skills and keep up with changes in the law and the practice of law. An appointed attorney shall report his/her relevant Continuing Legal Education (CLE) credits directly to the SPD using the online billing system.
- e) An appointed attorney shall not appear in the workplace, including, but not limited to a courthouse, jail or other correctional facility, treatment or other placement facility, nor meet with a client, the client's family, or a witness in a case while impaired by drugs or alcohol or with a noticeable odor of intoxicants.
- f) An appointed attorney shall not accept a case appointment for a client with whom s/he has had a personal or sexual relationship. An appointed attorney shall not accept a case appointment for a client for whom s/he is or was the guardian or protective payee.
- g) An appointed attorney shall promptly notify the ACD director if the attorney has been arrested or charged with a crime. This notification shall occur within 24 hours of arrest or charging.

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## **2. Appellate Performance Standards**

Public Defender staff and appointed private bar attorneys are expected to meet the following minimum performance standards in postconviction and appellate cases.

The attorney shall:

- a) Provide zealous, effective and high-quality representation to the client at all stages of the appointed case.
- b) Know to a reasonably proficient standard all relevant Wisconsin substantive law and procedure, be familiar with federal law and procedure, and keep abreast of developments in substantive and procedural law.
- c) Comply with the Rules of Appellate Procedure; [Wis. Admin. Code § PD 1-8](#), the Rules of Professional Conduct for Attorneys and SPD Policies & Procedures and other rules, laws, and statutes relevant to the case.
- d) Interview the client to determine the client's position or goals in the appeal and to detect and explore issues or concerns not reflected in the record. The attorney is expected to speak personally with the client. The attorney shall be available for written and telephone consultation with the client.
- e) Provide the client with general information regarding the process and procedures which will be undertaken. Keep the client informed of all significant developments in the client's case. Provide the client with a copy of each substantive document filed in the case by all parties (prosecution, defense, guardian, amicus, etc.), except when not permitted by confidentiality or court rules.



- f) Address issues of bail (especially for the client with a short sentence) or release pending appeal (especially in [Wis. Stats. § 48, 51, 55](#) and [938](#) cases), jail credit and restitution, and refer such matters to the trial attorney when appropriate.
- g) Thoroughly review the complete circuit court record, all relevant transcripts and the presentence investigation report to identify issues of arguable merit. When warranted, counsel shall also thoroughly review the trial attorney's file, exhibits, discovery materials or other records; consult with the trial attorney; and investigate alleged facts or potential issues outside the record.
- h) Request and, if approved, utilize experts, investigators and interpreters when appropriate.
- i) Discuss with the client the merits and the strategy considerations - which include both the potential risks and benefits - of pursuing all identified issues. While it is the client's decision to decide whether to appeal and what remedy to seek, it is counsel's obligation to determine which issues have merit and the manner in which they will be pursued. Counsel, consistent with [Jones v. Barnes, 463 U.S. 745 \(1983\)](#), need not raise every non-frivolous argument and may sift and winnow out weaker issues for strategic advocacy purposes. Counsel must also consider that counsel's failure to raise an issue on direct appeal may prevent the client from raising the issue in a subsequent Wis. Stat. § [974.06](#) collateral review proceeding, absent sufficient reason, consistent with [State v. Escalona-Naranjo, 185 Wis. 2d 168, 517 N.W.2d 157 \(1994\)](#). If the client insists on pursuing a meritless issue or one that the attorney has winnowed out consistent with Jones v. Barnes, the attorney shall fully inform the client of the options (to proceed as counsel recommends, pro se, or with privately retained counsel) and the consequences of each option.
- j) If the attorney is of the opinion that a case contains no issue of arguable merit, communicate that decision to the client before filing a no-merit notice of appeal or no-merit brief. The attorney must inform the client of any right to a no merit report under the statutes and laws of this state. The attorney must inform the client of the client's rights and attorney's obligations under Wis. Stats. § [809.107 \(5m\)](#) or [809.32](#). The attorney must inform the client, consistent with [State ex rel. Flores v. State, 183 Wis. 2d 587, 516 N.W.2d 362 \(1994\)](#), of the client's options (to have counsel file the no-merit report, to discharge counsel and proceed pro se or with privately retained counsel, or to have counsel close the case with no court action) and the possible consequences of each option, including the disadvantages of proceeding without counsel. The attorney must document this exchange and send a letter to the client confirming the client's choice.
- k) When filing any motion, conform to the applicable local court rules and practice procedures. Postconviction or post-judgment motions should contain carefully drafted nonconclusory factual allegations and appropriate citations to the record and law warranting relief. It is the attorney's responsibility to seek extensions for the circuit court to decide motions where appropriate. The attorney shall ensure entry of a written order disposing of the motion.
- l) When filing a brief, conform to the applicable rules of the court in which the brief is being filed. All briefs shall have a professional, neat appearance free of typographical errors or misspellings. Briefs must adequately and accurately state the facts of the case and contain complete and accurate record citations. Briefs shall make appropriate use of legal authority referenced by a consistent method of citation that conforms to court rules or, where no rule exists, the Harvard Citator. Briefs shall utilize federal and foreign jurisdiction cases and non-case reference materials such as law reviews, treatises, and scientific works where appropriate.

- m) Inform the client of his or her rights and the attorney's obligations in regard to proceeding to the next appellate court level and take steps to ensure that such rights as fall within the scope of the attorney's appointment are not procedurally defaulted.
- n) Respond in a prompt and forthright manner to all inquiries and requests for information from the client, the parties, opposing counsel, the SPD, the court, the clerk of court, and any successor attorney.
- o) Maintain a complete up-to-date case file for every case. The file shall contain, at minimum, all correspondence, including a closing letter or memo; copies of all documents filed; proof of service for all transcripts, court records or other papers that trigger a time limit; copies of all court orders or decisions; notations in summary form as to all action taken, advice given, and telephone and in-person communications; a record of documents provided to the client; and a case activity log or voucher that documents the attorney's time spent on the case.
- p) At the termination of representation, inform the client in writing of the reason for closing the file and any options for further action the client may have on direct appeal. If counsel cannot contact the client via mail, the closing information and the reason why the closing letter was not sent should be recorded in a memo to the file.
- q) When requested at the termination of representation, promptly deliver to the client or the client's successor attorney the full contents of the client's case file. Note that, pursuant to Wis. Stats. § [972.15 \(4\)](#) and [\(4m\)](#), the attorney may forward the attorney's copy of the presentence investigation report to a successor attorney, but may not forward it to the client without prior authorization from the circuit court.
- r) Promptly close the file upon completion of representation and submit case closing documents. Retain the client file consistent with the Rules of Professional Conduct for Attorneys and SPD Policy.
- s) Cooperate with any successor attorney in the case.

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### **3. Core Principles of Juvenile Defense Practice**

- a) Juvenile defense is a specialized practice area in the law that requires working knowledge with the Wisconsin Juvenile Justice Code, principals of adolescent development, relevant case law, familiarity with local resources and rules and basic proficiency in criminal defense.
- b) The child is the client and a juvenile defense attorney is obligated to represent the client's expressed interest. A juvenile defense attorney never acts as guardian ad litem.
- c) Juvenile defense attorneys are expected to promptly interview clients in person and to identify client goals and objectives of the representation, to counsel juvenile clients about options and must keep them informed during the course of the representation. Interviewing children requires age appropriate communication methods and skills.
- d) If a client is in custody, a juvenile defense attorney must work promptly and persistently for release of the child to the least-restrictive community consistent with the client's expressed interest.
- e) Juvenile defense attorneys must consider the legal competency of all juvenile clients to proceed. A juvenile defense attorney must review all relevant records and obtain an evaluation of the juvenile when appropriate.

- f) Juvenile defense attorneys cannot skip the basics duties of effective criminal defense practice which include: Interview all prospective witnesses, investigate legal and factual defenses, litigate legal motions and issues before trial that are consistent with the theory of defense and prepare for contested trials and dispositions.
- g) Juvenile defense attorneys must consider all possible alternatives to a delinquency adjudication.
- h) Juvenile defense attorneys must recognize the seriousness of waiver to adult court and take reasonable steps to keep juvenile clients within the jurisdiction of the juvenile court. Attorneys must know the legal standards and procedure governing waiver as well as the legal circumstances that subject a juvenile to original adult court jurisdiction.
- i) Juvenile defense attorneys must be familiar with all dispositional options under the law and with the resources available in the jurisdiction handling the case. Attorneys should seek the least-restrictive option available for each juvenile client, consistent with the client's expressed interest.
- j) Juvenile defense attorneys must understand the collateral consequences of adjudication for a delinquency, particularly sex offender registration. Advise clients of the potential consequences throughout the representation, especially before an admission is entered in a judicial proceeding.
- k) Juvenile defense attorneys must be prepared to represent juvenile clients in post-disposition proceedings for changes of placement, revisions, extensions, and sanctions.
- l) Juvenile defense attorneys must advise juvenile clients about post disposition relief and recommend appeal of any unfavorable outcome.

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## **B. Continuing Legal Education (CLE)**

[Wis. Admin. Code § PD 1.035\(4\)](#) requires that all attorneys certified by the SPD complete six credits of continuing legal education each calendar year to maintain certification. The credits must be pertinent to criminal defense practice areas. Credits must be reported to the SPD Assigned Counsel Division by December 31st of each calendar year. SPD will allow 6 credits to carry forward one calendar year. If an attorney does not have the required credits, s/he may be suspended from the appointment list. The ACD Director may allow an attorney who does not meet the requirement to submit a plan to become compliant. **CLE credits must be reported through the SPD online billing site in addition to reporting to the BBE.**

### **1. SPD CLE Courses**

The [SPD Training Division](#) offers live and online courses that meet SPD CLE requirements.

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### III. Appointment

Attorneys certified to take SPD appointments are contacted on a rotational basis per [Wis. Stat. § 977.08\(3\)](#). Attorneys may accept or decline cases when they are contacted. There is no minimum number of cases that you must take. Case availability varies greatly by county. Attorneys should contact the [local SPD office](#) to discuss how many cases they might expect to be offered.

The local SPD office will use its normal notification procedure for informing an attorney that an appointment has been made and it will file the Order Appointing Counsel (OAC) with the Wisconsin Courts e-Filing system.

After the OAC is filed and accepted by the court, the appointed attorney has to “opt-in” to the case. Please note, the court will need time to accept the OAC through the e-Filing system, so opting-in to a case may not be immediately available.

#### A. Scope of Appointment

Trial appointments cover all proceedings at the trial court level through dismissal, sentencing, or other disposition. Appellate appointments cover post-conviction, post-commitment, or post-dispositional representation.

An SPD certified attorney may, with the client’s consent, substitute with an SPD certified attorney at a routine appearance (i.e. no evidence taken, no testimony, no significant legal argument, and no disposition, including plea bargaining).

Attorneys must receive prior approval before any ancillary representation or work which is not squarely within the scope of appointment. The SPD will not pay for work done outside the scope of appointment without prior approval.

#### **Additional Cases**

An attorney is expected to accept an appointment for additional cases that the client becomes charged with in the future. If the attorney is not certified for those case types, the attorney should contact ACD. It is often in the best interest of the client and the agency to have the same attorney represent a client with multiple cases. Refusal to accept an appointment on additional cases may lead to adverse certification action. See [Wis. Admin. Code § PD 1.03\(5\)](#).

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## **Scope of Appointment Issues**

The following proceedings may be included in the scope of appointment.

### **Motion and hearing on return of a client's property**

This motion may be filed as part of the underlying criminal case as long as the attorney is bringing the motion prior to final adjudication or judgment. The best practice is for the attorney to identify before disposition whether there is any property belonging to the client that is being held by law enforcement. If there is such property, the attorney and the client may wish to make an informal request for return initially. If the agency declines to release the property and fails to respond promptly, the attorney and client should consider whether a motion is appropriate. Consideration should be given to the nature and value of the property, as well as any risk that additional examination or testing of the property could result in additional prosecution of the client.

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### **Restitution Hearing**

If the court orders restitution as part of sentencing, but does not determine the amount at the time, the attorney is ordinarily required to represent the client at the restitution hearing as part of the original case. However, if no restitution hearing is held or scheduled within one year after sentencing, the attorney may close the file. An attorney can submit an interim bill after sentencing, but before restitution is determined. Attorneys must request prior approval from ACD before submitting an interim bill.

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### **Writ of certiorari in a revocation proceeding**

This writ is a means of challenging the revocation decision made by an administrative law judge. There is no constitutional right to counsel in seeking certiorari or for an appeal from the order of the circuit court denying certiorari and upholding the revocation.

There are limited grounds for challenging a revocation decision to the circuit court: Certiorari review of a revocation decision consists of four inquiries:

1. whether the division kept within its jurisdiction;
2. whether it acted according to law;
3. whether its actions were arbitrary, oppressive, or unreasonable; and
4. whether the evidence permitted the division to reasonably make the order or determination in question.

[State v. Horn, 226 Wis.2d 637, 652, 594 N.W.2d 772 \(1999\) \(citing State ex rel. Warren v. Schwarz, 211 Wis.2d 710, 717, 566 N.W.2d 173 \(1997\)\).](#)

If the appointed attorney is not convinced there is reasonable chance of success, the attorney should decline to file the writ, but should advise the client on the applicable process and time limit. Click [here](#) for a sample client letter.

The Frank J. Remington Center, a program of the University of WI-Law School, has compiled a pro se inmate guide to challenging revocation by certiorari: [http://law.wisc.edu/fjr/laip/prose\\_packets.html](http://law.wisc.edu/fjr/laip/prose_packets.html)

Attorneys should contact ACD if they have questions.

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### **Ancillary (related) matters:**

Ancillary representation in a separate proceeding is permitted solely for the purpose of representing the client in the primary case (a pending case in which the SPD has appointed an attorney). The following are examples of ancillary representation:

#### **Civil property forfeitures**

The attorney may represent a client in a civil property forfeiture action only if it arises from another case in which the attorney has been appointed to represent the client. The attorney may not represent third parties (such as a relative or friend of the client), and the attorney may not litigate civil forfeitures after a final adjudication of the primary case, unless representation is necessary to safeguard the client's Fifth Amendment rights.

#### **Administrative hearings about revocation of driving privileges**

The attorney may represent clients in such hearings only if the attorney is already representing the client on an underlying criminal charge and revocation of driving privileges is relevant to the charges for which the attorney is appointed.

#### **"Fine-only" misdemeanors and forfeiture offenses**

If the only penalty for a misdemeanor charge is a fine, SPD representation is not affirmatively authorized. See [Wis. Stat. § 977.05\(4\)\(i\)\(3\)](#). Similarly, the SPD lacks authority to represent on offenses punishable only by a monetary forfeiture. Ancillary representation may be appropriate, however, when a criminal case (with potential imprisonment) is joined with a "fine-only" misdemeanor or a forfeiture offense.

For example, it is appropriate to negotiate a resolution of a criminal case that includes disposition of related non-criminal citations. An attorney representing a person charged with a felony possession of a firearm and DNR forfeiture violations arising out of the same incident would be able to represent on all charges.

### **Extraordinary writs:**

Prior approval from the ACD Director is required for an attorney to file the following writs.

- i. Habeas corpus to obtain the presence of a client or witness at a court proceeding or to obtain a client's release from custody.
- ii. Writ of Prohibition to obtain an order enjoining a court or party from taking specified action.
- iii. Mandamus to compel production of records or to compel other specified action.
- iv. Coram nobis to correct factual errors or omissions in the transcripts or other records of a proceeding.

If you question whether certain representation is allowable, please contact the [ACD Director](#) for clarification.

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## **B. Closing a Case**

An attorney is expected to represent an adult client from charging through sentencing, and a juvenile client from charging or detention through disposition. Sentencing or disposition includes the following:

- Notifying the client of Appellate rights
- [Filing the Notice of Intent to Pursue Post-Conviction/Disposition Relief](#)
- Obtaining credit for jail time served
- Representing the client at a review hearing scheduled within 60 days of the sentencing or disposition

If a review hearing, for which no right to SPD representation exists, is scheduled for more than 60 days from sentencing or disposition, the review hearing is not considered part of the underlying case for which the SPD appointed an attorney and the case should be closed by the attorney. The client will need to contact the local SPD office for re-evaluation to determine if the client still qualifies for SPD representation.

The court often adjourns proceedings pursuant to a settlement agreement or because of another occurrence that results in a delay of further proceedings. In all cases, an attorney must remain aware of ethical responsibilities to both the client and the court for hearing scheduled after cases are administratively closed.

The policies for keeping cases open in these situations are as follows:

1. **Mental disease or defect:** In cases in which the client is adjudicated not-guilty by reason of mental disease or defect, the attorney's responsibility ends with the entry of a commitment order under [Wis. Stat. § 971.17\(3\)](#) (and appropriate consultation about appellate rights), unless a review hearing is scheduled to take place within 1 year.
2. **Competency:** When a client's competency is in question, the attorney continues until the case is completed or until a court determines that the client is incompetent and unlikely to regain competency. The expectation is that the attorney will continue to represent the client at hearings set within one year of a finding of incompetency.



3. **Juvenile:** A juvenile case remains open for 60 days after the court approves a consent decree. If the case is reopened after 60 days because of an alleged breach of the consent decree, the case is treated as a new case, with a new appointment of an attorney.
4. **Deferred Prosecution:** When a deferred prosecution agreement or deferred adjudication agreement is entered into, the case remains open for up to one year from the date of the agreement. The attorney can interim bill after the agreement is entered into. Attorneys should request prior approval from the program manager or ACD Director to submit an interim bill.
5. **Chapter 51/55:** If a civil commitment case is settled with a hold-open agreement, the case remains open for up to one year after the agreement is entered into (unless the case is finalized at an earlier date). If the case is reopened because of alleged noncompliance with the "hold open" agreement, a new case may be opened and new counsel appointed. The attorney can interim bill after the agreement is entered into. Attorneys should request prior approval from the program manager or ACD Director to submit an interim bill.
6. **Bench Warrant:** If a bench warrant or capias is issued for a client for failure to appear in court and the client has no further contact with the attorney within 60 days of the issuance of the bench warrant, the case may be closed. If the client later appears, a new case is opened and new counsel will be appointed.
7. **Restitution:** If the court orders restitution as part of sentencing, but does not determine the amount at the time, the attorney is ordinarily required to represent the client at the restitution hearing as part of the original case. However, if no restitution hearing is held or scheduled within one year after sentencing, the attorney may close the file. The attorney can interim bill after sentencing, but before restitution is determined. Attorneys should request prior approval from the program manager or ACD Director to submit an interim bill.
8. **P-CHIPS:** In a Parental CHIPS case, the case remains open, and the attorney provides representation, during periodic permanency plan review hearings. Attorneys should request prior approval from the program manager or ACD Director to submit an interim bill.

When closing a case, you must submit a [Notice of Completion of Representation](#) to the clerk of courts for each case you are closing.

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### C. Withdrawing from A Case

An attorney shall personally act as an advocate for the client and provide effective representation to the client at all stages of proceedings. In the event that an attorney must withdraw, they shall notify the local SPD office as soon as the attorney moves to withdraw. If the attorney does not notify the SPD of the withdrawal, the SPD will not be aware that new counsel needs to be appointed. (The courts do not notify the SPD when motions to withdraw are filed.)

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## IV. Expert, Investigator, Interpreter, and Transcript

Criminal representation often includes the services of an investigator or an expert witness. The SPD reimburses attorneys for these expenses when they are necessary to provide an effective defense.

### A. Locating Services

Many attorneys use Defendernet (the SPD listserv hosted by the State Bar) or [Wisconsin Association of Criminal Defense Lawyers \(WACDL\)](#) for suggestions. Members of these listservs can provide the most current information about possible experts, investigators and interpreters. ACD is the administrator of Defendernet. If you wish to be added to the Defendernet listserv, contact [ACD](#).

#### 1. Expert

Attorneys are encouraged to use all resources at their disposal prior to contacting the Assigned Counsel Division as we are not able to determine the quality of any expert. Your colleagues are the best resource for locating an expert.

#### 2. Investigator

**Professional Association of Wisconsin Licensed Investigators**  
<https://pawli.com/>

#### 3. Interpreter

Wisconsin Court System maintains a database of certified interpreters - [Wisconsin Court System - Court services - For interpreters - Search \(wicourts.gov\)](#)

#### 4. Court Reporter/Transcriptionist

VendorNet lists transcription services that have contracted with the State of Wisconsin: [VendorNet Contract Information \(wi.gov\)](#). After clicking on the link, scroll down to and click on "Vendor Info". This will download a multi-tab spreadsheet. The "awards" tab will tell you which services are available in the county in question. Once you find the vendors in the county in which the case is being prosecuted, you can click on the Vendor Contact Info tab to find the contact information for those services. Attorneys are not required to use a service listed on Vendornet. If you choose a service not listed on Vendornet, you must negotiate a rate in line with the state approved Vendornet fees.

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## B. Rates for Services

The SPD has limited resources to pay for experts, investigators and other third-party service providers. You should negotiate the best price for services. Many providers will work SPD cases at a discounted rate(s).

### 1. Experts

The cost of an expert can vary greatly depending on the type of work and your locale. The SPD rarely approves experts at their private pay rates. ACD staff can assist you by providing information about the normal costs associated with various types of expert services.

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### 2. Investigators

The SPD investigator reimbursement rate is \$25/hour plus mileage.

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### 3. Interpreters

The cost of an interpreter can vary between \$40/hour-\$100/hour depending on the language. ACD staff can assist you by providing information about the normal costs associated with various types of interpreter services.

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### 4. Court Reporters/Transcriptionist

The fees that a court reporter can charge are controlled by [Wis. Stat. § 814](#). The cost of transcription service can vary greatly depending on the subject matter and turn-around time.

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### 5. Witness who is also an Expert

Sometimes there will be a witness in a case who happens to be an "expert". Often this witness is the emergency room doctor, family physician, or counselor. If the testimony sought from such witnesses is for their expert opinions as well as their observations, they are entitled to expert fees. See [In Re: the Imposition of Sanctions in Alt v. Cline, 224 Wis. 2d 72 \(1999\)](#) (In addition to demonstrating a compelling need for the expert's testimony, the party seeking the expert's testimony must present a plan of reasonable compensation.)

If you have such a witness in your case, you should speak with them and negotiate reasonable fees for their testimony. You must then get approval from ACD for those fees prior to incurring them.

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## 6. Court Appointed Experts

The SPD will not pay for any expert appointed by the court. When the court has appointed the expert, the county pays for that expert. Common examples are:

- Competency – under [Wis. Stat. § 971.14](#)
- Certain NGI proceedings – under [Wis. Stat. § 971.17](#)
- Sexually Violent Person Commitments and petitions – under [Wis. Stats §. 980.031\(3\)](#), [980.07\(1\)](#), [980.08\(3\)](#), [980.09\(1m\)](#)
- Initial and follow-up involuntary commitment examinations – under [Wis. Stats. § 51.20\(9\)](#), [51.20\(16\)](#)
- Initial and annual protective placement evaluations – under [Wis. Stats. § 55.11\(1\)](#), [55.11\(2\)](#), [55.18\(1\)](#), [55.18\(3\)\(bm\)](#)

If the court has appointed an expert, you may request approval for funding for a different expert. Your request should explain why a second opinion is necessary.

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## C. Requesting Services

### Submitting an Expense Request

Prior approval is required before working with any expert, investigator, or transcription service. Prior approval is also required for certain interpreters and for any other expense expected to be over \$100.

- 1) Log into your [online billing account](#).
- 2) Click on **Expense Authorization**.
- 3) Click on **Add New Request**.
- 4) Select the case for which you would like to submit the request from the **Select a Case** dropdown menu and click **submit**.
- 5) Complete the **Case Expense Request Edit** form.
- 6) The request should address the following questions:
  - a. Why is the expert needed? (what is the theory of defense and how does the expert help with the presentation of that defense)
  - b. What work will the expert perform? (record review, testing, evaluation, consultation, report writing, testimony, etc.)
  - c. Why is there a reasonable likelihood of a helpful opinion from the expert?
  - d. What impact will the expert have on the case and is the cost of the expert reasonable in light of that impact?
- 7) Click Submit Request when complete.

***ACD carefully reviews every expert request. Your request for funding may be denied if the justification is insufficient.***

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### 1. Experts

Once ACD has approved your request, you should follow up with a letter to your expert. The letter should state clearly the amount approved and that the expert must contact the lawyer before exceeding that amount. The SPD is not responsible for paying more than the approved amount.

The letter should also clearly describe the services that have been negotiated. Rather than say "psychological evaluation", the letter should list the work that goes into such an evaluation such as: review medical records, interview client, consult collateral sources, review police reports, or provide a written report to attorney. This will help avoid misunderstandings and overbilling.

You should hold your expert to his/her original estimate. If an expert tells you that s/he will need more time to complete the work, you will need to submit another expert request. Approval must be obtained before allowing the expert to proceed.

Since funding is limited, ACD prefers that attorneys work with in-state experts. Please contact ACD if you would like to work with an out of state expert.

Experts should provide the attorney with a detailed invoice of work performed which will then be submitted to [ACD@opd.wi.gov](mailto:ACD@opd.wi.gov) when the attorney requests payment.

[How do I bill for the expert?](#)

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## 2. Investigators

Once ACD has approved your request, you should follow up with a letter to your investigator. The letter should state clearly the amount approved and that the investigator must contact the lawyer before exceeding that amount. The SPD is not responsible for paying more than the approved amount.

The letter should also clearly describe the services that have been negotiated. Rather than say "investigative work", the letter should list the specific types of work such as: review police reports, review and photograph scene, interview client, provide a written report to attorney, etc. This will help avoid misunderstandings and overbilling.

You should hold your investigator to the original estimate. If an investigator tells you that more time is needed to complete the work, you will need to submit another expense request. Approval must be obtained before allowing the investigator to proceed.

Investigators should provide the attorney with a detailed invoice of work performed which will then be submitted to [ACD@opd.wi.gov](mailto:ACD@opd.wi.gov) when the attorney requests payment.

[How do I bill for the investigator?](#)

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## 3. Interpreters

The attorney must complete the SPD Interpreter Request form for all interpreter service. Attorneys should complete their portion of the form and send it on to the service provider.

[How do I bill for the interpreter?](#)

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#### 4. Transcripts

Prior approval is required for all transcript requests. If prior approval is not obtained, the obligation to pay the transcript expense falls upon the attorney who requested the service. Once the request has been approved an attorney must complete the appropriate SPD Transcript Request form.

##### **Trial Level Appointments**

- Attorneys are to use their best judgment when deciding what transcripts are needed. No attorney should have a policy of automatically ordering every transcript.
- Transcripts obtained during trial level representation belong to the client, but should be retained by counsel until the conclusion of representation. If a Notice of Intent to Pursue Post-Conviction Relief is filed, the transcripts must be forwarded to SPD Appellate intake along with the date stamped copy of the Notice of Intent and Appellate Questionnaire.

##### **Appellate Level Appointments**

- Transcripts needed for post-conviction review will be ordered by SPD Appellate staff.
- Transcripts obtained during appellate level representation belong to the client, but they are to be retained by counsel until the conclusion of representation.
- When you request copies of the court record under [Wis. Stat. § 967.06](#), the Clerk of Court will bill the SPD directly.
- **If the provided trial proceedings transcripts are incomplete or if a transcript of a post-conviction hearing is needed, the attorney of record will need to order the transcript.**

##### **In Court Proceedings**

- 1) Submit an [expense authorization](#) through your online billing page.
- 2) If the expense is authorized, complete the SPD [In Court transcript request form](#) and submit it to the court reporter. If there is particular testimony that you need, limit the request to that portion.
- 3) When you receive the transcript, please provide the client name and number of transcript pages received to the [SPD appointment office](#) that appointed the case.

[WI Circuit Court Directory](#)

**Transcription services for Out-of-Court recordings** (Revocation Hearings, Other material i.e. interrogations, police video, etc.)

- 1) Submit an [expense authorization](#) through your online billing page.
- 2) If the expense is authorized, complete the SPD [Out of Court transcript request form](#) and submit it with the recording to the transcriber.
- 3) The SPD will not approve a request for a court reporter to be present at a revocation hearing.

To request revocation hearing recordings from the Division of Hearings and Appeals (DHA), please submit a written request to [DHAMail@wisconsin.gov](mailto:DHAMail@wisconsin.gov). Your request should include the client's name, DOC inmate#, date of hearing, a copy of the Order Appointing Counsel and your name and address.

State Approved Court Reporters/Transcription providers: [Vendornet](#)

## **Depositions**

- 1) Submit an [expense authorization](#) through your online billing page.
- 2) If the expense is authorized, complete the SPD [Depositions form](#) and submit it to the transcriber.

State Approved Court Reporters/Transcription providers: [Vendornet](#)

[How do I bill for transcript/transcription service?](#)

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## V. How to Obtain Records

### A. Non-DOC Medical Records

1. You **MUST** get prior approval **BEFORE** requesting medical records.
2. **Do not pay** for medical records out of pocket.  
If you pay, you may be overcharged by the records provider. The SPD will only reimburse attorneys for the statutory amount. The rates for copies of medical records of SPD clients are set forth in [Wis. Stat. § 146.83\(3f\)](#).
3. Once ACD approves the expense
  - a) [Per Wis. Stat. § 146.83\(1b\)](#), an attorney provided by the State Public Defender is a "person authorized by the patient" to request medical records.
  - b) Complete SPD Health Records release form.
  - c) Complete service provider records release form.
  - d) Make a copy of the OAC to include with your request.
  - e) Send SPD health records release, service provider records release form, a copy of the OAC, and a copy of the Health Care Provider letter to the health care facility.
  - f) Notify service provider to submit billing to:  
State Public Defender  
Attention: Fiscal Unit  
PO Box 7923  
Madison, WI 53707-7923

[Health Care Provider Letter 2013 WI ACT 342](#)  
[Health Care Records Q and A Medical Records Rates](#)  
[SPD Health Records Release](#)

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### B. DOC Related Records:

There is no fee for SPD client records from the Department of Corrections (DOC).

1. Adult Institutions and Juvenile Facilities (In custody/Treatment)
  - a) What records do I need?  
SPD has created a [checklist](#) for DOC health care records. The checklist is a tool to help make requests more specific. In most cases, you will NOT need to order an entire health care record.

**Note:** the SPD checklist is only for Division of Adult Institutions and Division of Juvenile Corrections health care records

b) Where are my client's records?

A client's entire health care record moves from institution to institution. DOC health care records do not follow a client to a DHS facility, except the Wisconsin Resource Center.

Beginning in 2018, inmates will have an electronic medical file. Some inmates may have both an electronic and a paper file. Ask for both formats when sending in your request to DOC.

[Adult Institutions \(In Custody/Treatment\) - Health Care Records flowchart](#)  
[Juvenile Facilities - Health Care Records flowchart](#)

c) How do I request records?

Complete the SPD checklist and form [DOC 1163A](#) (note: form DOC 1163A authorizes disclosure only, the SPD checklist serves as your records request). Below is a link to contact information for all DOC facilities. Contact DOC to confirm where you should send the checklist, form DOC 1163A, and a copy of your SPD Order Appointing Counsel.

[Adult Facilities](#)  
[Juvenile Facilities](#)

d) Do I pay for DOC records?

No. DOC provides the records of SPD clients to SPD appointed attorneys at no cost.

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## 2. Community Supervision

a) What records do I need?

If you need health care records from your client's former incarceration, SPD has created a [checklist](#). The checklist is a tool to help make requests more specific. In most cases, you will NOT need to order an entire health care record.

b) Where are my client's records?

Division of Community Corrections Health Care Records [Flowchart](#)

c) How do I request records?

Complete the SPD [checklist](#) and form [DOC 1163A](#). (note: form DOC 1163A authorizes disclosure only, the SPD checklist serves as your records request). Below is a link to the DOC homepage, which includes Quick Links to contact information for all DOC facilities. Contact DOC to confirm where you should send the checklist, form DOC 1163A, and a copy of your SPD Order Appointing Counsel.

[Community Corrections](#)

d) Who is my client's probation/parole officer?

[DOC-Division of Community Corrections](#)



- e) Do I pay for DOC records?  
No. DOC provides the records of SPD clients to SPD appointed attorneys at no cost.

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### 3. Adult Institutions and Juvenile Corrections (Old Records)

- a) What records do I need?  
SPD has created a [checklist](#) for DOC health care records. The checklist is a tool to help make requests more specific. In most cases, you will NOT need to order an entire health care record.
- b) Where are my client's records?  
Health care records for males who are no longer in custody or under supervision are stored at [Dodge Correctional Central Health Care Records](#). Health care records for females who are no longer in custody or under supervision are stored at [Taycheedah Correctional Inactive Women's Medical Records](#).
- c) How do I request records?  
Complete the SPD checklist and form [DOC 1163A](#) (note: form DOC 1163A authorizes disclosure only, the SPD checklist serves as your records request). Below is a link to the DOC homepage, which includes Quick Links to contact information for all DOC facilities. Contact DOC to confirm where you should send the checklist, form DOC 1163A, and a copy of your SPD Order Appointing Counsel.

[Adult Facilities](#)

[Juvenile Facilities](#)

[Community Corrections](#)

- d) Do I pay for DOC records?  
No. DOC provides records of SPD clients to SPD appointed attorneys at no cost.

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### C. DMV Records

[Click here](#) to be redirected to the Department of Motor Vehicles website to request a copy of a Wisconsin driver record abstract.

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### D. Other Records

Requests for school records, public records, and other records should be directed to the records custodian. A case expense request and prior approval is required if the expense is expected to be over \$100.

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## VI. Case Expenses

The SPD provides funding for reasonable expenses. Expense rules also apply to expenses incurred by experts and investigators. Questions about expenses should be directed to [ACD](#) prior to incurring the expense.

### **Prior approval is required for:**

- Any expense expected to be \$100 or more
- All expenses for transcripts and medical records
- Legal research expenses more than \$20
- All expenses for expert and investigator services

Prior approval is obtained by submitting a case expense authorization request through the [ACD online billing page](#).

At the time of billing, receipts are not required for most expenses totalling less than \$50. ***However, you must retain receipts for all expenses to support your billing (including receipts less than \$50). The SPD may request receipts at any time for auditing purposes.***

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### **A. Expenses Attorneys Should Not Pay**

The SPD is exempt from paying for the following expenses and will not reimburse private bar attorneys:

1. [Department of Corrections records fees – See Section V.](#)
2. [Subpoena service per Wis. Stat. § 814.29\(1\)\(d\)2.](#)

**Note:** An attorney has no authority to subpoena a person to appear at the attorney's office to "meet" with the attorney, nor does an attorney have the authority to subpoena a person to provide documents directly to the attorney. A subpoena may direct a person to provide documents at a court proceeding.

A subpoena is a Supreme Court Form (GF-126A). This form is available on the Wisconsin Court System website or by [clicking here](#).

A criminal defense attorney cannot issue a subpoena in a criminal case. Contact the local clerk of court's office or local SPD office regarding the procedure for obtaining a subpoena form signed by a clerk of court or judge. See [Wis. Stat. § 885.01](#).

Once an attorney has a properly signed subpoena, the subpoena(s) should be tendered to the county sheriff's department. Attorneys should include a copy of the order of appointing counsel with the subpoenas when submitted to the county sheriff's office. You need to be sure the county sheriff's department is aware the subpoena is associated with a public defender case otherwise the sheriff's department will charge a fee to the attorney.

The SPD does NOT pay the sheriff's department to serve subpoenas. Indigents are not required to pay a service fee and the SPD does not reimburse the expense per [Wis. Stat. § 814.29](#).

In certain instances, fees and costs can be assessed to an SPD client. Per [Wis. Stat. § 973.06](#) service fees may be assessed against the client at sentencing.

3. *Witness fees*

Attorneys that handle SPD cases should not pay witness fees. Witness fees are paid by the county in which the action or proceeding is had. See [Wis. Stats. § 885.08](#) and [885.10](#)

4. *E-filing fees*

The electronic filing fee shall not be charged to Wisconsin state and local government units. See [Wis. Stat. § 801.18\(7\)\(c\)](#)

[Click here](#) to be redirected to the Wisconsin Courts website for more detailed information and instructions.

5. *Wisconsin Supreme Court filing fees*

Exempt per [Wis. Stat. § 814.29](#)

**The following expenses should be billed directly to the SPD by the service provider:**

6. *Interpreter fees*

A private bar attorney may retain the services of an interpreter when necessary without prior approval if:

- a) the hourly rate is \$50/hour or less, and;
- b) the total amount of billable time (professional service + travel) does not exceed 10 hours. Interpreters may charge \$25.00/hr. for travel if providing the service involves travel to a destination more than 30 miles, one way, from the interpreter's principal office.

The interpreter's bill must list the dates of service and time spent performing interpreter duties. Travel time must also be itemized by date and indicate the destination city or location. Interpreters may also charge for mileage at the state rate in effect at the time the service is provided.

The interpreter must submit the completed [Interpreter Request form](#) to the SPD Fiscal Unit along with the invoice.

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7. *Discovery Payments*

Discovery is the material and information that a prosecuting attorney is required to disclose by [Wis. Stats. § 971.23](#) and [980.036](#) or by the constitution and laws of Wisconsin or the United States. Rates of reimbursement are mandated by [Wis. Admin. Code § PD 8](#). Attorneys cannot bill discovery on the invoice that is submitted for their service.

Providers of discovery should send their bills to:

Wisconsin State Public Defender  
Attention: Fiscal Unit  
PO Box 7923  
Madison, WI 53707-7923  
[spdfiscalunit@opd.wi.gov](mailto:spdfiscalunit@opd.wi.gov)

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8. *Medical Records – See Section V.*

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9. *Transcripts/Transcription Services*

In Court Proceedings:

The court reporter must submit the completed [request form](#).

Out-of-Court Recordings:

The transcription provider must submit the completed [request form](#).

Depositions:

The transcription provider must submit the completed [request form](#).

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## B. Non-Reimbursable Expenses

The SPD will not reimburse for certain expenses.

### 1. Attorney Time

- a) Contact with the SPD on case appointment and other administrative issues

- b) Work done prior to the date of appointment
- c) Work done which is primarily administrative in nature **such as:**
  - Preparing Subpoenas
  - Copying/Printing/Scanning/Faxing/Mailing
  - Opening/Closing File
  - Ordering Transcripts/records
  - Opt-in/Electronic Registration
  - Reviewing OAC
  - Scheduling Jail/prison visits
  - Picking up/Delivering Records or discovery (including travel time)
  - Receiving Documents
  - Communicating with JA/Clerk/Court Reporters
  - Notice of Appearance/Retainer (OAC tells the court who the attorney is)
  - Checking Vinelink
  - CCAP/Checking Status of Case
- d) Completion of all SPD forms (including all billing forms, expense requests, etc.)
- e) Work done by an attorney other than the appointed attorney. \*Except that an SPD certified attorney may, with the client's consent, substitute at a routine appearance (i.e., no evidence taken, no testimony, no significant legal argument, and no disposition, including plea bargaining). In order to be reimbursed for the substitute attorney time, the time slip entry for the routine appearance must include the name of the attorney appearing as a substitute.
- f) Uncompleted phone calls
- g) Time spent appealing payment decisions
- h) Time spent responding to a claim of ineffective assistance of counsel

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## 2. Expenses

- a) Office Overhead, such as:
  - In-office photocopying (except as noted in section C (5) below)
  - Administrative and paralegal time
  - Basic phone service
  - Faxing
  - Duplication of the case file
  - Bar dues
  - Malpractice insurance
  - Legal Research/Subscriptions
  - Jury Instructions – Free online – [click here](#)
  - CLE fees
- b) Transcript preparation fees which are payable by the state or county (e.g. state appeals)
- c) Process service fees without prior approval
- d) Client transportation and costs to purchase clothing for clients
- e) Costs associated with an appeal of our payment decisions
- f) Costs associated with ineffective assistance of counsel claims against the attorney
- g) Costs associated with late payment to an expert or investigator

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## C. Billable Case Expenses:

1. Reasonable attorney hours – [click here](#)
2. Travel and mileage
  - Travel time is reimbursed if any portion of the trip is outside the county in which the attorney's principal office is located or if the trip requires traveling a distance of more than 30 miles, one way, from the attorney's principal office.
  - Mileage (in-county & out-of-county) is paid at the rate set by the State of Wisconsin at the time the case was appointed provided the total miles for each trip claimed are itemized within the time slip (examples below).
  - SPD only pays for travel time relative to SPD clients.

**Time slips that do not include itemized mileage and time of travel will not be reimbursed for mileage claims.**

Report mileage on the time slip line related to the travel.

- **IN-COUNTY MILEAGE** should be entered on the time slip with the event for which it was incurred, indicating office to location and mileage.

**Example:** Mileage from Milwaukee Office to Milwaukee County Courthouse

Time Slip Detail			
Date	Detail Type	Detail	Hours
05/24/19	Non-Evidentiary Hearing	8:30 Return on Warrant-Office to Court; RT 4mi	.5

- **OUT OF COUNTY TRAVEL AND MILEAGE**

- Single Stop Trip (Point A to Point B to Point A)

The following information must be included in the time slip entry:

1. Departure/Court Time
2. Departure City
3. Destination City
4. One-way (OW)/Round Trip (RT)
5. Miles

**Example:** Madison Office to Waupun to visit client

Time Slip Detail			
Date	Detail Type	Detail	Hours
1/10/19	Travel To/From-Explain	9am Madison Office/Waupun; RT 116	2.25

➤ Multi-Stop Trip (Point A to Point B to Point C to Point A)

The following information must be included in the time slip entry:

1. Departure/Court Time (first leg only)
2. Departure City (each leg)
3. Destination City (each leg)
4. Client Name (each leg)
5. Total Miles

**Example:** Round-Trip from Madison Office to Waupun to see Client A then to Redgranite to see Client B then to Madison office

Time Slip Detail			
Date	Detail Type	Detail	Hours
05/31/2019	Travel To/From-Explain	10am Madison/Waupun/Client Name; Waupun/Redgranite/Client Name; Redgranite/Madison; 206mi	4

• **ALTERNATE START POINT:**

If the attorney begins the trip at some point other than their principal office, the attorney must provide the reason for leaving from the alternate point so as to justify the expense.

**Example:** Office in Madison - live in Cambridge - client in Jail in Jefferson County - 8:30 Court in Jefferson County

Time Slip Detail			
Date	Detail Type	Detail	Hours
1/11/19	Travel To/From-Explain	7am Cambridge Home/Jefferson Jail/Jefferson Court 8:30 am/Madison Office; RT44 mi	1.5

When reporting time to conduct business with multiple clients in the same location, enter all mileage and out-of-county travel time on one invoice (attorneys can choose which invoice.) **Do not split the travel between clients** or (if a client has more than one case) **between cases** for one client.

**Example:** Out-of-County - Madison Office to Waupun to see three SPD clients

Time Slip Detail			
Date	Detail Type	Detail	Hours
06/04/2019	Travel To/From-Explain	9am Madison/Waupun; Client A, Client B and Client C 125 mi	2.25

**Example:** Out-of-County - Office to Court/Jail to see three SPD clients

Time Slip Detail			
Date	Detail Type	Detail	Hours
06/25/2019	Travel To/From-Explain	10am Madison Office to Jefferson for Court for Client A, Client B and Jail for Client C; 77 mi	1.75

Auditors use Google maps to verify reported mileage and reasonable travel time. If a trip takes longer than expected (bad weather, construction, etc.) the attorney should indicate the reason on the time slip.

**Example:** Madison Office to Waupun during a weather event

Time Slip Detail			
Date	Detail Type	Detail	Hours
12/01/2019	Travel To/From- Explain	9am Madison/Waupun; RT 116 mi (icy road conditions)	3.5

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### 3. Parking

- Parking is reimbursed. Receipts must be produced upon request.

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### 4. Expert/Investigator Services (prior approval required)

- When you submit your invoice to the SPD, you must include the expert/investigator bill as an expense. You must also submit the expert's itemized invoice. The expert/investigator invoice must include the dates of any and all services provided. SPD payments to attorneys include payment for expert/investigator invoices. Attorneys are required to promptly pay experts/investigators. See [Wi. SCR § 20:1.15\(d\)](#)
- In some cases, an expert bill may be processed before the case is concluded. You may contact ACD to request approval to submit an interim bill for your expert's costs. Generally, interim bills for experts are approved if the case will not close for at least 60 days and the expert's work is completed.
- The SPD cannot pay a retainer for expert services. If necessary, ACD will provide a letter to the expert documenting approval and the amount the Agency has agreed to pay. If you would like to discuss an expedited payment for an expert, [contact ACD](#).

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### 5. Reasonable photocopying, printing and postage expenses

- While a case is pending it may be helpful for a client to have access to information in the client file. A client who is incarcerated may not be able to access electronic material, and an attorney may print and provide the client those documents helpful for the client to review.
  - In house copying:** The attorney must submit a [Trial Level Photocopying & Printing Expense Reimbursement Form](#) and, if the expense is expected to exceed \$50, the attorney must first submit a case expense request.
  - Copy Service:** The SPD will reimburse for reasonable duplication expenses for out-of-office copying (excluding duplication of the case file). A receipt from the copying service indicating the number of pages and price per page is required.



- b. The SPD will reimburse for reasonable duplication expenses related to serving and filing appellate documents (motions, briefs, petitions for review, no-merit reports) that are reasonably required to discharge counsel's duties or obligations.
- c. The reimbursement rates are \$.10 per page for in-office copying. Rates for out-of-office copying are \$.10 per page or less plus fees for producing, compiling, or stapling. A receipt is required for reimbursement if the expense totals \$50 or more. [Copy Expense form](#)
- d. Printing documents from electronic format – the maximum reimbursement rate for printing electronic documents, such as discovery or e-file information, is \$0.10/page.
  - i. In office printing expense: The attorney must provide a [printing expense form](#) stating the number of pages printed.
  - ii. Out-of-office printing expense: A receipt is required for printing expenses \$50 or more.
  - iii. E. Any requests to reimburse postage should include the date and description of item mailed within the time slip detail.

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6. [Obtaining records other than medical records or DOC records](#)

- If you obtain any other records, you must provide the receipt if over \$50 and request authorization if over \$100.

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7. [Photos policy](#)

Photos are generally provided as part of electronic discovery. The SPD will not pay for color copies of photos to be made from electronic images. If an attorney would like photographs for court exhibits, the attorney should submit a case expense authorization prior to incurring the expense.

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8. [Phone calls and video contacts](#)

The SPD will reimburse collect calls from the client. Long distance calls and video client contacts will be reimbursed only if they result in a separate and additional charge to the standard bill for maintaining communication service.

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9. [Text Messages](#)

ACD will reimburse attorneys .01 hour (36 seconds) per text message. If an attorney is claiming more than .01 hour per text message, the attorney should identify the professional legal services being conducted via text messaging. Attorneys should itemize the number of text messages for which they are requesting reimbursement. ACD may also request copies of the text messages for auditing purposes.

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#### 10. Lodging (prior approval required)

Lodging and meals – Lodging 60+ miles from home may be reimbursable. A hotel's standard rate may be higher than the state rate, but some hotels honor the state rate when informed that the stay relates to official state business and when shown a copy of the Order Appointing Counsel.

Meals are reimbursed only when associated with an approved overnight stay. When a meal is included in the cost of lodging, such as a continental breakfast, an expense related to dining out for that meal is not reimbursable. **Prior expense approval and receipts are always required.**

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#### 11. Client file

- The file is property of the client. The SPD does not pay for a duplicate copy of the file. Attorneys may copy documents for their files at the attorney's expense. If the attorney must provide the client file to the client or to successor counsel, the attorney should bill the delivery cost directly to the SPD Fiscal Unit. The attorney must complete a [Client File Delivery Expense Reimbursement form](#) and submit it along with the required receipts and verification.

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#### 12. Appellate briefs

- Reasonable expenses for mailing, serving, and filing a petition for review, motions, briefs, no-merit reports, or other documents required to discharge counsel's duties. This does not apply to general correspondence in appellate matters. Counsel must effectuate timely filing and service in the least expensive manner available. Counsel may utilize the U.S. mail or third-party commercial carriers. However, express mail and express delivery charges are disfavored and will not be reimbursed if unreasonable. A receipt is required for reimbursement
- The cost of production of any briefs and the cost to file the briefs should be billed directly to the Assigned Counsel Division (ACD). The attorney must complete an [Appellate Copying and Delivery Reimbursement form](#) and submit it along with the required receipts.

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## VII. ACD Billing Terms and Conditions

Your acceptance of an SPD appointment completes an agreement between you and the SPD. The SPD will pay an attorney only for reasonable hours of professional legal services. The SPD will not reimburse an attorney to perform administrative work ([click here](#)).

"Reasonable hours" are those required by an experienced, prudent, and competent practitioner to provide effective legal assistance.

When auditing a bill for "reasonableness", the SPD will consider a number of factors, including:

- experience of the attorney
- common charges
- whether the attorney withdrew
- extent and novelty of motion practice
- seriousness of the charges and case type
- complexity of the fact pattern and legal issues
- whether the case resolved with a plea or trial

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### A. Hourly Rates

Attorneys will be paid \$70 per hour for in-court and out-of-court time, and \$25 per hour for travel time per [Wis. Stats. § 977.08\(4m\)\(c\) & \(d\)](#) for cases appointed after 12/31/19.

Since the hourly rate increased from \$40/hour to \$70/hour for cases appointed after 12/31/2019, an attorney may represent a client on companion cases with different hourly rates. For example, case #1 appointed 12/20/19, and case #2 appointed 1/6/20. If you are representing the same client on what would normally be considered companion cases, but those cases are appointed in 2019 and 2020, the time and expenses for those cases should be tracked separately and reported to the SPD separately on more than one invoice.

**NOTICE:** "Companion Cases" are two or more cases to which an attorney is appointed to represent the same client, which proceed during roughly the same time frame, and which have the same drop-down menu in the SPD online billing site. ***SPD policy calls for an attorney to bill his/her time and expenses for all companion cases on an invoice for one companion case and submit invoices for \$0 for other companion cases.*** An exception to this policy is when you are appointed to multiple cases for the same client in years when the hourly rate is different. **If companion cases that are appointed in 2019 and 2020 are combined on one invoice, attorney time will be reimbursed at \$40/hour.**

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## B. Time Keeping

### **Contemporaneous time records, and receipts, must be maintained.**

Contemporaneous time records should include the date the work was performed, a description of the work completed and the amount of time it took to complete the work. Time records need not be submitted to our office with your billings, but must support your time slip and be provided to ACD upon request. Attorneys must keep time records and receipts for at least three years, after submitting the invoice, to resolve questions the SPD may have about an invoice. Failure to maintain these records may result in non-payment or removal from SPD certification lists. See [Wis. Admin. Code § PD 1.03\(5\)\(e\) & \(f\)](#).

By submitting a time slip, **an attorney is certifying that the entries are accurate.**

Time slips must contain sufficient information to allow the SPD to perform its auditing and review responsibilities. The description should be detailed enough to allow the auditors to determine if the time is reimbursable and reasonable.

Attorneys may bill only for the time actually spent providing professional legal services on an SPD case.

If court is conducted via audio or video conference, the wait time is not reimbursable. The expectation is that attorneys are able to perform other work while waiting for hearings.

In-court and out-of-court time must be separated on the time slip. For example: In-court time would include an evidentiary hearing. Out-of-court time would include meeting with your client before or after the court hearing.

Time records and time slip entries should be supported by work product in the client's file. Work product may include notes, correspondence, phone message slips, pleadings, etc. Hours claimed that are not supported by work product in the file will not be paid.

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## C. Invoice Submission

### **1. Trial Level Appointments**

Attorneys should submit invoices at the conclusion of their representation. Representation is not complete until the attorney has completed the steps listed in the [Duties of Trial Counsel memo](#).

An invoice is submitted electronically using the attorney's password protected billing page. An invoice will not be processed unless it is complete and includes all required receipts and documentation. By submitting an invoice, an attorney certifies that the invoice is accurate, the invoice complies with billing rules, and that the attorney provided representation in compliance with [SPD minimum attorney performance standards](#). The attorney is responsible for the accuracy of bills and compliance with billing rules even if the billing is prepared and submitted by another at the attorney's request.

Attorneys should submit final invoices within 60 days of conclusion of their cases. Failure to submit an invoice within six months of the conclusion of the case releases the SPD from both the obligation to promptly pay an invoice and to pay interest on an invoice paid more than 120 days after submission. See [Wis. Admin. Code § PD 4.02](#). An invoice received more than six years after conclusion of the case cannot be paid. See [Wisconsin Constitution Article 8, Section 2](#).

## **2. Appellate Level Appointments**

Representation in a direct appeal begins at the date of appointment and continues through review, or denial of a petition for review, in the Wisconsin Supreme Court. An attorney may submit a final invoice every time a case passes from one court to another. (i.e. from the post-conviction phase to the direct appeal phase.) If an attorney chooses to submit a final invoice when the case passes to the next court, the attorney should notify the Appellate Office for reappointment. If an attorney files a no-merit report, he or she may get approval from ACD to submit an interim invoice while waiting for the court to affirm or reject the report.

## **3. Interim invoice submission**

An attorney may seek approval to submit an interim bill for payment of expert fees, investigator fees, or attorney time before the case concludes. Interim bills for experts and investigators will be approved in most instances if the expert/investigator has performed a significant amount of work, or if the expert or investigator's work is completed. Approval of an interim bill for attorney time will be considered when the attorney has performed a substantial amount of work on the case, the case is more than six months old, and the case is unlikely to be completed within the next 60 days.

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## **E. Invoice Auditing**

All invoices are audited for required documentation and approvals to ensure that non-reimbursable time or expenses have not been billed and that time totals and expense totals are reasonable and accurate. Pursuant to [Wis. Stat. § 977.08\(4\)](#), the SPD may approve or reject a bill in whole or in part. Should you be dissatisfied with the decision of the SPD regarding your bill, you have the right to appeal the decision to the Public Defender Board. See [Wis. Stat. § 977.08\(4\)](#). The appeal must be filed in writing with the SPD at PO Box 7923, Madison, WI 53707-7923 within 30 days of receipt of payment. The appeal must include a statement explaining why the attorney believes the adjustment to the bill was inappropriate.

Attorney bills are subject to cumulative audits. Audits to check for duplicate travel and other time are routine. Audits of invoices may occur when an attorney has a pattern of high billing, unit billing (e.g. always billing 1.7 hours to draft opening documents, always billing .5 hour to review CCAP, etc.), or other irregular billing practices. In some instances, the SPD is obligated to report improper billing to the Office of Lawyer Regulation, local prosecutors, or the Department of Justice.

The SPD will not pay for more than 15 hours in a single day and may question any day in which an attorney bills more than 8 hours. Consideration will be given on a case by case basis for

exceptional circumstances which may justify payment of more than 15 hours in a single day. Attorneys with days of more than 15 hours will be contacted before any adjustments to payments are made.

Attorneys should be prepared to produce contemporaneous time records for the dates in question. The SPD will not pay for more than 2080 hours worked in a calendar year. See [Wis. Admin. Code § PD 4.06](#). Attorneys who bill more than 2080 hours worked in a calendar year will be contacted before any recoupment is made.

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## **F. Interest Payments**

The State's Prompt Payment Laws, [Wis. Stats. § 16.528](#) and [16.53\(11\)](#) require payment of interest on state order and contract payments that are not made in a timely manner. Payments made from this appropriation are considered timely if they are mailed within 120 days of receipt of the invoice. See [Wis. Stat. § 20.550 \(1\) \(d\)](#)

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## **VIII. Legal Resources**

### **A. Specialty Practice Resources**

The SPD operates a number of specialty practice groups.

Each practice group is led by a coordinator(s) who stays abreast of the latest developments in the practice area and shares this expertise as an advisor, mentor, and educator. Coordinators serve as a clearinghouse, assisting others in quickly changing areas of legal practice. Private Bar may contact them as needed when they are preparing a client's case or have a question in a new or undeveloped area of the law.

#### **[Specialty Practice Group Links](#)**

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### **B. Wisconsin Circuit Court E-filing Resources**

[Wisconsin Circuit Court eFiling website](#)

### **C. Trial and Appellate Practice Guides**

[Appellate and Trial Practices Guide](#)  
[Appellate Templates and Forms](#)

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## IX. ACD Forms and Documents

### A. Direct Bill Expense Reimbursement Forms

1. Interpreter Request Form  
[Interpreter Request Form](#)  
[Wisconsin Courts Interpreter Search](#)
2. Transcript Request Form  
[In Court Form-PDF](#)
3. Transcription Service Request Forms  
[Out of Court Form-PDF](#)  
[Depositions Form-PDF](#)

### B. File Delivery Reimbursement Form

If the attorney must provide the client file to the client or to successor counsel, the attorney should bill the delivery cost directly to the SPD Fiscal Unit. The form and receipts should be submitted to the address on the form or emailed to [SPD Fiscal Unit](#).  
[Client File Delivery Reimbursement Form](#)

### C. Copy Expense Reimbursement Forms

A copy of the proper form and receipts should be emailed to: [ACD@opd.wi.gov](mailto:ACD@opd.wi.gov) .  
[Appellate Copying and Delivery Reimbursement Form](#)  
[Trial Level Photocopying & Printing Expense Reimbursement Form](#)

### D. Certification Applications

[General Certification Application](#)  
[Misdemeanor Certification Application](#)  
[Class B-I Felonies, Juvenile, Mental Health and Revocation Certification Application](#)  
[Class A Felonies Certification Application](#)

[Trial Litigation Experience and Training Requirements Form](#)  
[Appellate Certification Application](#)  
[Appellate Litigation/Training Form](#)

### E. Department of Transportation DMV Records Form

[DMV Record Access for Wisconsin State Public Defenders](#)  
[Len Bias Liability Memo](#)



## F. Contracts

[Request for Proposal Submission Instructions](#)

[2020 Request for Proposal Checklist Form](#)

### **Misdemeanor Contracts**

Fiscal Year 2023 contracts and applications coming soon

2020 [Fixed Fee Request for Proposal](#)

[2020 Fixed Fee Sample Contract](#)

### **Chapter 51 Contracts**

Fiscal Year 2023 contracts and applications coming soon

2020 [Fixed Fee Request for Proposal](#)

[2020 Fixed Fee Sample Contract](#)

## G. DOC forms

[Records Memorandum of Understanding](#)

[Record Checklist](#)

[11163A DOC Authorization for Disclosure of Health Confidential Information](#)

[DOC Record Policy](#)

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## X. Contact Information

<a href="#">Assigned Counsel Division</a>	ACD@OPD.WI.gov	608.261.0632
<a href="#">Mark Rinehart</a>	ACD Program Supervisor	608.267.1771
<a href="#">Kim Salas</a>	Financial Specialist Senior	608.264.8562
<a href="#">Lawrence Judkins</a>	Financial Specialist Senior	608.261.8852
<a href="#">Michelle Weihert</a>	Financial Specialist Senior	608.264.8561

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