



Assigned Counsel Division Newsletter

JENNIFER BIAS, STATE PUBLIC DEFENDER

Though many of you know me, allow me to introduce myself to those who don't. I have held several roles at the SPD starting as a staff attorney in Racine, a local and regional manager, Deputy Trial Division Director, and, since 2015, the Trial Division Director. In June, the SPD Board named me as the State Public Defender. It's an honor to have this opportunity to lead this agency doing the most important work in the criminal legal system.

I want to thank all of you for the critical role that you play in providing direct representation for our clients. Your role is critical to the operation of the public defense system in Wisconsin.

If you are certified but haven't taken an appointment in a while, please consider accepting an appointment. Much has changed in the last few years. From an hourly rate increase to \$100 an hour, a travel rate increase to \$50 an hour, paying an increased rate to investigators and now reimbursing for support staff time, and more, many changes have been made to support the work that you do. Please do not hesitate to reach out to Assigned Counsel Division staff or your local SPD office to find out more.

I look forward to seeing many of you at our conference in Milwaukee on November 14 and 15.



2024 DANNY BERKOS AWARD

Established in 2018, the Berkos Award recognizes an SPD-certified private bar attorney who goes above and beyond in their representation of SPD clients. The award is named after late SPD Board Chair, Daniel Berkos. Attorney Berkos continued to represent SPD clients through his 30-plus year tenure as Chair of the SPD Board.

Nominations come from the SPD Board, SPD staff, or private bar attorneys. The recipient is chosen by members of the Board and the award is presented during the SPD's Annual Conference in November. The nomination form was sent via email. If you did not receive it, please email Melissa Lamb at lambm@opd.wi.gov

HOLD the Date

Upcoming Training Events

August 14-16 in Pewaukee
Forensic University: Digital Evidence

September 23-27 in Delavan
Working as a Team: An Institute for Attorneys and Investigators

November 14-15 in Milwaukee
SPD Annual Conference

**Don't forget to enter your SPD-required CLE credits online!*

UPDATE FROM THE APPELLATE DIVISION

New Expedited Appeal Procedure for Orders Under Wis. Stat. § 971.14

Wis. Stat. § 809.109 went into effect July 1, 2024. This statute changes how appeals from criminal competency determinations and involuntary medication orders are handled. There are many things trial attorneys need to do in order to begin the appeal process including filing the appropriate notices and serving them on the Department of Health Services. A breakdown of the statute, a checklist, and other materials are available on the SPD Mental Health Practice Coordinator website:

<https://www.wisprd.gov/competency>

New and updated documents on the Appellate Division's section of the SPD's website, available [here](#).

- Trial Attorney Questionnaire: **Please use the new version going forward.**
- Perfecting Appeals in Public Defender Cases

We also added more samples/templates to our website (interloc template, sample interlocs, motion to stay pending appeal (when interloc), motion to set bond and stay sentence, etc.).

PRACTICE POINTERS

Some private bar attorneys were under the impression the agency will only approve specific experts - this is a misunderstanding. Feel free to reach out to Forensic Practice Coordinators Vincent Rust and Colleen Taylor on any cases where you have scientific issues or otherwise need an expert. They will consult with you and suggest experts who may be helpful for your case, but you are not limited to these experts. Forensic practice coordinators will suggest people who have been used by the agency in the past, but if you find someone else whose work you like, feel free to reach out to them. If you find an expert who is helpful, please let us know so we may add them to our list to suggest in the future.

Vincent and Colleen are always happy to brainstorm cases, provide sample cross examinations, discuss potential experts, and help in your cases in any way possible - you can reach out to them by email or phone at rustv@opd.wi.gov 608-766-4014 and taylorc@opd.wi.gov 414-227-4999.

Update on out-of-state residential care centers (RCCs) from Eileen Fredericks, Youth Defense Practice Coordinator.

Many counties have placed kids at Youth Villages, which have residential units in Tennessee and Georgia. Placements with Youth Villages were on hold (at least for Dane County) after a resident death in one of their Tennessee units. The state of Tennessee has concluded their investigation in this matter (a standard protocol) and Youth Villages is again able to take referrals for placement. Youth Villages has had limited capacity to accept out of state referrals in the last 18 months or so owing to increased placements from the state of Tennessee and limited staffing. However, they have indicated that they may have limited openings in coming months. Per eWiSACWIS, there are currently 10 Wisconsin youth placed in various Youth Villages units.

There are more pressing issues with Acadia facilities. Acadia is a company that operates residential treatment centers and psychiatric hospitals across the United States. In 2022 the US Senate Finance Committee launched an investigation into four national companies that operate residential facilities for youth - Acadia was one of the four companies. The 135-page Senate Committee on Finance Staff Report was released on June 12, 2024. Here is an article about the report entitled, "[Senate Finance Committee Releases Excoriating Investigation of Abuse in At-Risk Youth Industry](#)." The article also has a link to the actual report.

As a result of this report, Dane County will no longer be contracting with Acadia. If you have a kid for whom the recommendation is placement in an Acadia facility, please read this article and report.

If you have questions about any of this, please feel free to reach out to Eileen at 608-264-8574 or frederickse@opd.wi.gov.

A MESSAGE FROM RICK JONES

I am Rick Jones, the Race and Ethnicity Disparity Practice Coordinator for the Wisconsin State Public Defender. As such, I am responsible for identifying racial and ethnic disparities in our youth and adult systems and helping to develop systematic strategies for reducing and eventually eliminating those disparities. Racial and ethnic disparity refers to the unequal treatment of persons in our juvenile and adult criminal justice systems as result of race or ethnicity. Current data reveals that racial and ethnic disparities result in disparate outcomes for similarly situated youth and adults. As disparate treatment can happen at all stages of the system, from arrest, summons, charging decisions, processing, arraignment, detention, bail and sentencing/disposition, and we must be prepared to both identify and address those issues.



As an African American man who litigates throughout the state, I have learned that racial and ethnic disparities are issues that frequently arise in systems throughout our state. We are currently working on a number of significant issues in our state. In one county, we are dealing with selective prosecution issues where only Native juveniles are being charged. In another county, we are addressing cross racial identification issues. And in a number of counties, we are developing strategies to deal with driving while Black or Brown issues.

My goal is help you develop litigation strategies to address these issues as they arise in your cases. Therefore, I ask that you feel free to reach out to me when these issues arise in your cases so that we can develop motions, brief, and arguments to address them.

What are my responsibilities?

- ◆ Provide advice and consultation regarding racial disparity issues in the criminal and juvenile systems.
- ◆ Respond to questions about race and ethnicity issues and assist in developing litigation strategies.
- ◆ Identify, create, and disseminate relevant resources.
- ◆ Develop motions, briefs, and practice guides (cheat sheets).
- ◆ Update the Racial Disparity Coordinator website with motions, briefs, articles, case law and other materials necessary for representation and litigation of practice issues.

What kind of things can I help you with?

- ◆ Driving while black or brown
- ◆ Lack of diverse jury panels
- ◆ Batson Challenges: removing jurors solely based on race or ethnicity
- ◆ Cross racial identification issues
- ◆ Selective prosecution based on race
- ◆ Referrals to experts

I am available to private bar attorneys, so please use me as a resource when you need me. Please know that I am here to help and you are free to email or call me at any time. I can be reached at jonesr@opd.wi.gov or (608) 267-1778.

PRACTICE POINTER

Current Issues in Pretrial Motion Practice, from Adam Welch, Pretrial Motion Practice Coordinator

Here are three fairly common scenarios to be on the lookout for:

(1) Substitute Analyst: Under the new SCOTUS case *Smith v. Arizona*, we have a much stronger argument that it violates confrontation for the State to call a substitute analyst to testify when the original analyst is not available. Look for this especially in your OWI and drug cases, where it is particularly common!

(2) 2nd Amendment Challenges: While *U.S. v. Rahimi* actually upheld a restriction on gun possession, it reinforced *Bruen* and seems to give some hints that disarmament may not be appropriate for a person's whole life or for folks with no history of violence. This means if you have felon in possession cases where the predicate offense is either non-violent or very old, you should be looking into challenging the statute as unconstitutional as applied.

(3) THC Jury Instructions: No new developments in the law, but I think the time is ripe to be forcing the State to prove the delta-9-THC concentration in all marijuana possession prosecutions. The law permits the possession of cannabis products as long as it has less than 0.3% delta-9-THC by dry weight, but the crime lab can't actually run those tests. We should be insisting that it is the State's burden to prove the illegality of the item, not our burden to disprove it.

TIME SLIP TIPS

- ⇒ Please note: Some of our forms have been updated. Please see our website ([click here](#)) for the most current forms.
- ⇒ Travel reporting guidelines: You must include the city of origin, the destination city, the number of miles being claimed, and the time of day the travel occurred. Failing to provide this information could delay payment.
- ⇒ When submitting invoices that include a charge for third-party services, please also submit the receipts to ACD@opd.wi.gov at the same time to avoid payment delays.
- ⇒ All communications with SPD should contain the SPD ID number corresponding to the case in question.
- ⇒ Please make sure you are billing a maximum of .01 per text message and .05 per voicemail. These entries should not be combined with unlike tasks on the time slip. If there are multiple messages on a given day, you may combine them on one line and note the total number of messages.
- ⇒ As a reminder, cases must have the same drop down menus and billing rates to be billed as companion cases. If either of those are different, the cases **MUST** be billed separately. If billed incorrectly, ACD will return the invoices to you for correction/separation.
- ⇒ You are not required to provide any detail for entries on the time slip where “explain” is not shown in the drop-down menu selection.

Assigned Counsel Division Contact Information

You can reach ACD staff by telephone at 608-261-0632 or by email at ACD@OPD.WI.GOV