

Minimum Attorney Performance Standards

The following are the minimum attorney performance standards for an SPD appointed attorney. These standards reflect the SPD's 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.

I. General

1. 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](#).
2. An appointed attorney shall comply with local court rules in the counties in which s/he practices.
3. An appointed attorney shall comply with statutes, administrative code rules, and SPD policies and procedures related to public defender appointments, certification and billing.
4. In all cases, including, but not limited to, those under [Wis. Stats. § 48, 51](#) and [55](#), an appointed attorney shall function as adversary counsel.
5. 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.
6. 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.
7. 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.

8. 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

9. 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.
10. 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 of a scheduling conflict that cannot be avoided.
11. 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.
12. 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

13. 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.
14. An appointed attorney shall consult with the client as often as necessary to elicit the information necessary to build a defense.
15. 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.
16. 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.
17. An appointed attorney shall present and consult with the client about all plea negotiations and offers of settlement.
18. 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

19. An appointed attorney shall actively represent an in-custody client on the issue of release throughout the case.
20. An appointed attorney shall review and examine the complaint and accompanying papers, information or other charging document and determine the sufficiency of the same.
21. 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.
22. 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.
23. An appointed attorney shall cause an investigation of the facts including attempting to interview appropriate defense or prosecution witnesses.
24. 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.
25. An appointed attorney shall utilize experts, investigators, paralegal/legal assistants, interpreters and other professional support where appropriate.
26. An appointed attorney shall consider all appropriate available diversion, treatment court, and other alternatives to prosecution.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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:
 - a. obtain and review all DOC documents relevant to the administrative or court hearing

- b. where appropriate, review material held by the DOC including but not limited to the client's file held by his/her agent
- c. review information regarding the offense(s) underlying the supervision
- d. coordinate representation with any attorney handling a new criminal matter for the same client
- e. insure that issues regarding sentence structure and sentence credit are properly resolved
- f. represent the client through the administrative hearing
- g. file an administrative appeal unless, after consultation with the client, the client consents to foregoing the administrative appeal
- h. 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.
- i. represent the client in the related re-confinement hearing or sentencing after revocation, unless successor counsel is appointed.

Professionalism and Ethics

- 32. 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.
- 33. 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.
- 34. An appointed attorney shall maintain a system of conflict checks.
- 35. 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.
- 36. 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.
- 37. 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.
- 38. 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.

II. 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:

1. Provide zealous, effective and high-quality representation to the client at all stages of the appointed case.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. Request and, if approved, utilize experts, investigators, paralegal/legal assistants and interpreters when appropriate.
9. 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.

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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.
19. Cooperate with any successor attorney in the case.

III. Core Principles of Juvenile Defense Practice

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. Juvenile defense attorneys must consider all possible alternatives to a delinquency adjudication.
8. 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.

9. 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.
10. 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.
11. Juvenile defense attorneys must be prepared to represent juvenile clients in postdisposition proceedings for changes of placement, revisions, extensions, and sanctions.
12. Juvenile defense attorneys must advise juvenile clients about post disposition relief and recommend appeal of any unfavorable outcome.