



# Assigned Counsel Division Newsletter

Edition 3, April 2014

## Wisconsin Victory in Florida

For this edition of the ACD Newsletter, we are highlighting a Florida case, State of Florida v. Rishi Ramgoolie. As many of you are aware, this was a four week shaken infant homicide jury trial for which Donna Kuchler was the lead attorney. Donna's client, in his early twenties, was charged in 2008 with 1st degree murder of his cousin's infant daughter. He was facing the death penalty. Thanks to Donna, he was acquitted earlier this year in February.

It is impossible to put into words the compassion, effort, preparation, and skill that went into trying this case. We are so very lucky to have Donna as a member of our criminal defense community. She was kind enough to take the time to answer a few questions for this newsletter. Enjoy!!

How did you end up representing this client?

Rishi's mother did an internet search looking for a lawyer who specialized in head/brain injuries. Her search led her to a law firm in Sheboygan, WI. She spoke to the paralegal there who informed Mrs. Ramgoolie that they were a civil

firm and did not handle criminal cases. The paralegal told Ms. Ramgoolie that she (the paralegal) had just been a juror on a shaken baby case in Sheboygan wherein they found the defendant not guilty. She told Ms. Ramgoolie that she should call that defense attorney and that was me.

Did you have a Florida license? How did you get admitted?

I did not have a Florida license. I was admitted pro hoc vice for this case only. I had to find a sponsoring attorney so I called Attorney Jeffrey Marty who used to work for us as a law clerk from Marquette about 10 years ago and who I knew was practicing law in the Tampa, FL area. He agreed to sponsor me and he also worked extremely hard on this case for several years.

Did you have local counsel? How did you find/select him/her?

Yes. See answer to #2

### Special points of interest:

- **Wisconsin's own Donna Kuchler: Victory in Florida**
- **Time slip Tips**
- **Kathy's Corner: Revocation and Writs of Certiorari**
  
- **State Public Defender  
NEW  
WEBSITE**

## Victory in Florida continued...

What were some of the major differences between Florida and Wisconsin law?

The major difference between Florida and Wisconsin is that attorneys are permitted to take depositions. I spent about 4 years taking depositions of lay and expert witnesses. Also, the jury selection process is quite different in that we either "accept" or "reject" a juror and we choose our alternates during the selection process.

How long did you have this case? What kind of motion practice was involved?

I had the case for 6 years before the trial commenced. We filed extensive motions over the years including two different motions to suppress our client's statements (denied both times), Daubert challenges, and a motion to exhume the baby's body which had been buried in Jamaica. That motion was also denied but formed an interesting voir dire issue. One of the questions I asked the jury pool was whether anyone themselves or knew someone who ever had a body exhumed. One gentleman raised his hand and said yes. I inquired further and he told me that his cousin had been charged with murdering his stepson and his lawyer was successful in getting the body exhumed. He further told the panel that after that a doctor took a second look at the body and determined the injuries pre-dated his cousin's contact with the stepson. That was an amazing moment for me because I knew that during the trial I planned to raise the local medical examiner's opposition to my exhuming this baby's body so that we could get a second opinion.

How did you feel representing a client facing the death penalty?

It was frightening to represent someone charged with a death penalty case. Honestly, what I found the most frightening was that I was able to become "death certified" in a one day period, as that's all the course required.

What was the most difficult part of this case?

The most difficult part of this case was the medicine. It was so extremely complicated and some of the medical issues were only flushed out in the past year or so when certain radiological reconstruction techniques became more widely available to us. The State had hired one of the top neurosurgeon/child abuse doctors in the country from Hershey Medical Center and there was a lot of pressure on me to understand the head and brain in particular and also to read and understand volumes of medical literature. I did nothing but work with doctors for the 2 weeks before this trial started and throughout every evening of the 4 week trial. Every day I needed to review CT scans, x-rays, tissue slides and autopsy photos to correlate the injuries.

What was the easiest part?

Nothing in this case was easy. Even our 6 expert witnesses said this was one of the most medically challenging cases they ever worked on.

What surprised you the most in representing this client?

I don't know that there were any surprises in this case. However, I was pleased that during the trial we were able to absolutely demonstrate a lucid interval which has always been a controversial subject. Even the State's medical examiner when called by the state on rebuttal, was forced to acknowledge it. I think we did a good job of educating the medical examiner on the dating and timing of injuries.

What was your client's reaction to the verdict?

Of course, my client was thrilled with the verdict.

Did any of the jurors speak with you?

The jurors did not speak with me because the Court has sealed their names and forbidden contact. I would love to speak to the jurors.

What are your biggest take-aways from this experience?

This case reinforces my belief that you cannot try a SBS/AHT case without medical experts. I also think that no matter how many weeks I set aside before trial to work on the case, it will never seem like I've prepared enough. I am very grateful to everyone who assisted me in this case and the countless hours donated by doctors who testified and who didn't, just to help me understand and correlate the pathology to the radiology. It was quite an undertaking.

## Kathy's Corner

### Revocations and Writs of Certiorari to the Circuit Court

Q: The administrative appeal of the ALJ decision to revoke my client was not successful. Client would like me to file a writ of certiorari to the circuit court. Am I obligated to do this?

A: Please contact the ACD director if you believe the writ has merit. Often, the attorney does not believe the record contains sufficient merit to challenge the Department, but the client would like to pursue the issue. A few years ago the LAIP program compiled a helpful manual on this issue:

<http://www.wisspd.org/html/ATPracGuides/Training/ProgMaterials/Conf2005/Ross/PGCRC.pdf>

Below is sample language from an attorney declining to file a writ of certiorari:

Dear Client,

I am writing to review the status of the revocation proceeding in which I was appointed to represent you. After your revocation hearing, the administrative law judge ordered revocation of your supervision. At your request, I submitted an administrative appeal to David Schwarz, Administrator of Hearings and Appeals. Unfortunately, that appeal has now been denied. Having represented you in both the revocation hearing and the administrative appeal, I have completed my work for you in this matter.

There is a legal procedure, called a petition for writ of certiorari, that allows a circuit court to review a revocation proceeding. However, because the scope of review is very limited, this type of petition rarely results in the court setting aside a revocation order. From my work in your case, I do not see any compelling issues that would justify the filing of a writ of certiorari.

Also, there is no constitutional right to have an appointed attorney in a certiorari proceeding. Therefore, I will not prepare this petition on your behalf.

For your information, I will provide you with a brief description of a certiorari proceeding to assist you in deciding whether to seek relief in this type of proceeding. The most important thing to note is that you must show that the revocation decision was not merely wrong but was arbitrary and capricious.

A writ of certiorari seeks review of a final order of judgment of a lower court or an administrative body, see *State ex rel. Hippler v. City of Baraboo*, 47 Wis. 2d 603, 178 N.W. 2d (1970). Certiorari is confined to a review of the record. The standard of review is whether there is substantial evidence to support the decision. The scope of review is limited, confined to review of the record. Certiorari review is not available when there is no error apparent in the record. Further challenges to your revocation must follow the procedures outlined above.

In reviewing the merits of a probation or parole revocation, the certiorari court defers to the hearing examiner's decision. See *Von Arx v. Schwarz*, 185 Wis. 2d 645, 517 N.W. 2d (Ct. App. 1994). Further, the probationer has the burden of proving that the revocation decision was arbitrary and capricious.

Appellate review of probation revocation by the Department is limited to four (4) inquiries: (1) whether the Department acted within the bounds of its jurisdiction; (2) whether it acted according to law; (3) whether its actions were arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was sufficient that the Department might reasonably make the determination that it did.

Please note that a petition for writ of certiorari must be filed with 45 days of your revocation order. To comply with filing requirements, there are also several technical details that must be handled correctly, including either the payment of a filing fee or submission of documents requesting filing without payment of fees. See generally §§ 801.02 (7)(a)&814.29(1m)stats.

Therefore, if you decide to file a petition, you should ensure that your petition is filed within this time limit and in proper form.

Sincerely,

Attorney

# NEW SPD Website

On April 15, the SPD rolled out a new website. The older version of the website [www.wisspd.org](http://www.wisspd.org) will remain active until May 15, 2014.

The web address for the new website is:

[www.wisspd.org](http://www.wisspd.org)

Please be sure to update any of your saved desktop shortcuts. The layout is completely new and is best used in a Google Chrome browser, if you do not have a Google Chrome browser, you can download it here.

<https://www.google.com/intl/en/chrome/browser/>

Other browsers may not be as compatible with some of the features of the new site. For example, the active link buttons on the new ACD homepage were added for convenience according to what features on the website had the most web traffic. These active link buttons require Google Chrome to function. If you are using a different browser (such as Firefox or Internet Explorer) the same content is available, but can only be reached from the drop down menus of the site

The new site's layout is easier to modify and can function with your mobile devices. Our goal with this new platform is to provide you with the most accurate information when and where you need it. If you find something that could be improved, please do not hesitate to let us know.

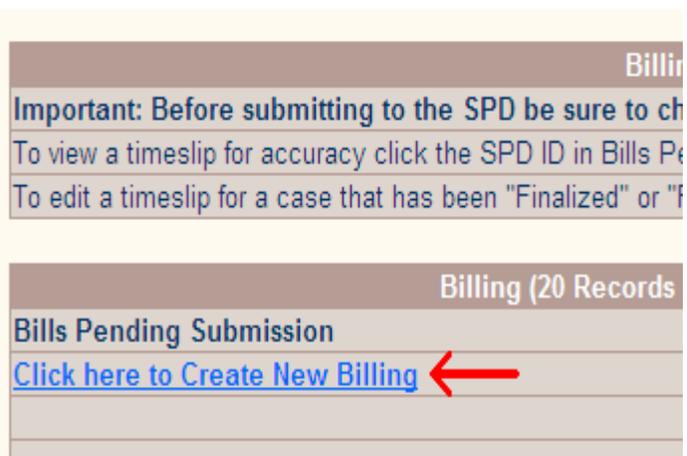
Please continue to use the Internet Explorer browser for your online billing site. We suggest creating a desktop shortcut for your personal online billing site.

## Time slip Tip

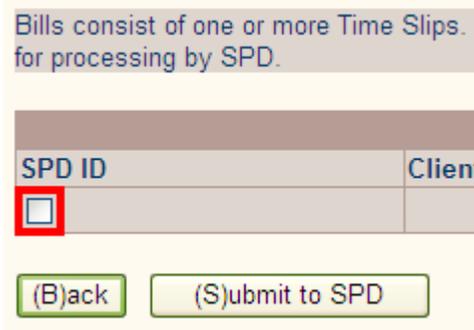
Q: Why can't I get my bill to finalize and submit to ACD?

A: The most common reason this occurs is because the attorney is trying to finalize a bill on a case for which he or she withdrew. Once you have withdrawn the system will not take you to the case closing screen. Instead, once your invoice is complete and you have clicked on finalize bill, the system will pop back to the **Private Bar Online View** screen.

At this point, the case should be listed in the bottom left hand corner under **Bills Pending Submission**. To finalize bills in this column, click on [Click here to create new billing](#).



Then check the box next to the case you want to send and click on **Submit to SPD**. Then follow the rest of the steps to submit the invoice.



If the invoice was not submitted properly and you clicked on **Reset to Edit**, the entire time slip will be deleted and you will have to start over.