

FAQ – Appellate Division Discretionary Appointments

What is a discretionary appointment?

This refers to the appointment of appellate counsel in a situation where there is no statutory or constitutional right to counsel. In the sort of cases that we handle, that usually means that there has already been a direct appeal or the deadline for initiating a direct appeal has passed.

The authority for appointing counsel where there is no right to counsel is found at Wis. Stat. § 977.05(4)(j), which states that the SPD may appoint counsel, even though there is no right to counsel, if “the case should be pursued.” We are unable to make such appointments very frequently due to a lack of funding.

What types of cases are eligible for a discretionary appointment?

Discretionary appointments can only be made in case types that the SPD is statutorily permitted to handle, including criminal, juvenile delinquency, and termination of parental rights cases. We cannot make discretionary appointments in appeals arising out of divorce proceedings, civil lawsuits for monetary or injunctive relief, civil forfeiture cases, and many other kinds of cases.

Even in criminal cases, we are not permitted to appoint counsel to assist with an appeal of a denial of a motion for sentence modification (except as part of a direct appeal) or a denial of a motion for sentence adjustment under Wis. Stat. § 973.195.

How do I request a discretionary appointment of counsel?

If the case originated in Milwaukee County, write to:

State Public Defender – Appellate Division
735 N. Water St. Ste. 912
Milwaukee, WI 53202-4116

If the case originated in any other Wisconsin county, write to:

State Public Defender – Appellate Division
P.O. Box 7862
Madison, WI 53707-7862

Your letter requesting appointment should include a description of the nature of the case and the appellate issue or claim. It would also be helpful if you would include copies of any postconviction motion or appellate document that has been drafted or filed, along with copies of any other documents necessary to understanding the nature of your case and claim.

How does the Appellate Division decide whether to make a discretionary appointment?

The Appellate Division will appoint an attorney under our discretionary authority only when we are convinced that there is a reasonable chance of success on appeal and the issue presented is of statewide importance, is important to the development of the criminal law, and is so complex that representation by an attorney is necessary.

Can I get a discretionary appointment even if the Appellate Division previously appointed counsel to represent me on direct appeal?

Every request for discretionary appointment is considered on a case-by-case basis. If there was a previous appointment made, we will consider whether there is any issue that was not previously raised that meets our discretionary appointment criteria (described above), along with the circumstances of any issue(s) previously litigated or the circumstances under which you previously decided not to pursue an appeal.

Can the Appellate Division help me get sentence credit?

The Appellate Division does not appoint counsel to make the initial request for sentence credit to the trial judge. However, if the trial judge denies credit, and the defendant files a timely Notice of Intent to Pursue Postconviction Relief (under Wis. Stat. § 809.30(2)(b)) from the denial of credit, and the defendant is financially eligible for appointment, the Appellate Division will appoint counsel to assist the defendant in appealing from the denial of the credit motion.

Therefore, before the Appellate Division can help you, you must ask the trial-level judge for the credit. You can ask your trial-level attorney, or the manager of the SPD office that appointed your trial-level attorney, for help with that initial request. Alternatively, or if you are denied trial-level assistance, you may write to the Appellate Division for forms and instructions on filing a motion for credit on your own.

Can the Appellate Division help me appeal a revocation of probation, extended supervision or parole?

The SPD's Trial Division – not the Appellate Division – can appoint counsel to represent a revocation client in filing an administrative appeal and a petition for a writ of certiorari in the circuit court, which are the first two steps of any revocation appeal. If you have not yet taken these steps, you should contact the SPD trial office that covers the county of your conviction.

If you pursue an appeal of a revocation decision, and the circuit court denies the certiorari petition, the Appellate Division will consider a request for the discretionary appointment of counsel for the purpose of appealing the denial of certiorari, under the criteria described above.

If the Appellate Division denies a request for counsel, is there any other legal organization that can help me with my case?

Depending on your case type and problem, you may contact the State Bar of Wisconsin for information on legal assistance. You should be aware that there are very few organizations that provide free legal help, and even fewer that provide free help with appeals.

If you are incarcerated, you may apply for assistance from the University of Wisconsin Law School's Remington Center – which includes Legal Assistance to Institutionalized Persons (LAIP) Project, the Family Law Project, and the Innocence Project. Write to:

Frank J. Remington Center
University of Wisconsin Law School
Rooms 4315-4318
975 Bascom Mall
Madison, WI 53706

If, ultimately, you appeal your case pro se (i.e. without an attorney), you may find it helpful to read the Wisconsin Courts' "Guide to Appellate Procedure for the Self-Represented," which is available online at <http://www.wicourts.gov/publications/guides/docs/proseappealsguide.pdf>.