

Assigned Counsel Division Newsletter

Volume 12, March 2017

Attorneys should NEVER pay these Expenses

Some court services are provided at no charge for indigent clients. **Attorneys should not be billed for these expenses:**

Subpoena Service by county sheriff department per state statute [814.29\(1\)\(d\)2](#).

Witness fees per state statute [885.10](#).

E-filing fees for SPD-Appointed Counsel per state statute [801.18 \(7\)\(c\)](#).

DOC Records: The Department of Corrections has a [memorandum of understanding](#) with the SPD. Copies should be provided at no charge. Attorneys must provide the Order of Appointing Counsel when requesting DOC records.

Some case expenses are paid directly to service providers by the SPD Fiscal Unit. Service providers should submit invoices directly to the SPD Fiscal Unit, PO Box 7923, Madison WI 53707. **Attorneys should not pay for the following expenses:**

Transcription: [SPD Transcript Request Policy and forms](#).

Medical Records: [SPD medical record](#) reimbursement rates are statutorily mandated under section [146.83](#). Attorneys must provide the Order of Appointing Counsel when requesting medical records. Attorneys must also submit a case expense request to the SPD.

Discovery: Discovery payment rates are mandated in [PD 8](#) of the Wisconsin Administrative code.

Interpreters: Please see [Interpreter Policy](#). If additional interpreter services are required, you will need to use the [Interpreter Request Form](#).

Special points of interest:

- **Does Appellate representation end if my client dies?**
- **Direct Bill and No Charge Case expenses**
- **Mandatory E-filing in Counties**
- **Update from Juvenile/ TPR Specialty Practice**
- **Wisconsin Crime Lab's policy: Analysts discussing the results of forensic analysis with the defense**
- **Upcoming SPD Training Events**

Appellate Q and A:

Scope of Appointment

Q: I have a pending appeal, fully briefed and submitted, but not yet decided. The client's family recently informed me that the client has passed away. What should I do regarding the appeal? I assume that the appeal is moot, because we were seeking a new trial.

A: Actually, the appeal continues. Although your assumption is logical, Wisconsin appellate courts will generally decide an appeal on the merits despite the defendant having passed away. The leading case addressing this situation is a 1988 decision involving the murder conviction of a former judge. The former judge, who had lost an election and then was convicted of shooting the new judge's law partner, committed suicide while his case was on appeal. The court explained that "when a defendant dies pending appeal... the defendant's right to appeal continues." [State v. McDonald, 144 Wis. 2d 531 at 536, 424 N.W.2d 411 \(1988\)](#).

In some cases, the client's death might be seen by the prosecutor as a reason to agree to vacate the conviction, rather than continue to litigate in the appellate courts. And if an appeal is successful, the prosecution will not be able to retry the deceased.

March 1 Marks the Start of Mandatory e-Filing for Many Wisconsin Counties

Last year, the Wisconsin Supreme Court adopted a rule petition creating **mandatory** Electronic Filing in the Circuit Courts see [Wis. Stat. § 801.18](#). Although the new rule was effective on July 1, 2016, e-Filing did not become mandatory for every county on that date. The court system has been gradually requiring e-Filing in certain counties.

On March 1, 2017 the following counties will require mandatory e-Filing. You will be automatically “opted-in” to e-File on your active (pending) cases.

Adams	Ashland	Barron
Bayfield	Calumet	Chippewa
Clark	Columbia	Dodge
Dunn	Eau Claire	Florence
Green	Green Lake	Iowa
Jackson	Jefferson	Juneau
La Crosse	Manitowoc	Marathon
Marquette	Oneida	Ozaukee
Pierce	Portage	Racine
Richland	Rusk	Trempealeau
Vernon	Walworth	Washington
Waukesha	Waupaca	Waushara
Winnebago	Wood	

Visit the SPD Legal Resources page for the complete [SPD e-Filing Guide and templates](#).

Here are some helpful tips to get you started with e-Filing:

◆ **Ensure that your “active” cases list is accurate.**

In the next week or two, if you practice in one of the above counties, the court system will be sending you a list of cases where you are considered “attorney of record.” If there is an error on this list or if you have already closed your file on a case, notify your local clerk immediately about the error.

◆ **Update your account information.**

Attorneys log-in to the e-Courts system using the same username and password that they use to report their Continuing Legal Education (CLE) credits. If you need to update your account information in the e-Courts system to reflect your contact information at the SPD, [watch this video](#) for the steps on how to do so.

◆ **Opting Into SPD Cases**

All attorneys will have to opt-in through the [e-Filing system](#) to new cases appointed after March 1, 2017.

[How to opt-in as an electronic party on an SPD case.](#)

◆ **Document Templates in the e-Filing System**

The court system has **strict** e-Filing [document specifications](#) for documents filed through the e-Filing system.

[E-Filing templates.](#)

◆ **Opting-Out of SPD Cases**

The e-Filing system does not have a way to recognize when SPD-appointed attorneys have closed their cases in EOPD. In order to ensure that you do not receive future notices on a case after you have closed the case in EOPD, you need to e-File a [Notice of Completion of Representation](#) under the “**File Another Document**” tab in the [e-Filing system](#).

If you have questions regarding how e-Filing may impact the county you practice in, please contact your [local clerk](#).

If you have questions regarding the [SPD e-Filing procedures](#), please contact [Kat Dellenbach](#).

Update from Juvenile/TPR Practice Group Coordinator Diane Rondini-Harness

I would like to make you aware of a few issues that have recently popped up in both TPR and delinquency cases.

First, regarding **both TPR and delinquency cases**, I understand that there was direct contact and discussion regarding an ongoing TPR case by a DA with a represented TPR parent. There was also direct contact and a televised interview by a reporter, who is also a licensed attorney, with a represented alleged delinquent child without the knowledge or consent of the assigned attorneys. Not surprisingly, these contacts were detrimental to the cases. In light of these occurrences, please consider checking in with your clients and reminding them of the risks of talking about their cases to anyone other than you, but in particular a DA or a reporter.

In regard to TPR cases, it has been brought to my attention that there may be discovery, specifically emails, omitted from TPR discovery discs. You may want to file this updated [discovery demand](#) to cover this issue. Also, in TPR cases please watch for strategic emergency removals of children from placements as well as strategic limitations on visitation. You may also want to consider filing a protective order at the onset of the case to preserve these documents.

If you have any other questions or concerns, please feel free to contact the [TPR Practice Group](#).

If you represent a DOC child in Milwaukee, both Wraparound and HSW have established a protocol that will be helpful in finding an alternative to DOC placement. [Contact me](#). I will be able to put you in touch with the people assigned to each child who will help with placement and service alternatives.

2017 SPD Trial Skills Academy

May 15-19 Delavan, WI

[Details](#) [Agenda](#)

[Faculty Bios](#)

Visit the [Training Division](#) page, for up-to-date training schedules, agendas, and materials.

Homicide and Forensics Practice Group Q and A

Wisconsin Crime Lab's policy: Analysts discussing the results of forensic analysis with the defense

Q: What happens if I call the crime lab and ask the analyst to discuss the results of their analysis of [controlled substance; toxicology; trace evidence; firearms/tool marking: friction ridge/fingerprint; forensic imaging; questioned documents; FIS; crime scenes; DNA Analysis or DNA Databank]?

The [Wisconsin Crime Lab \(WCL\) policy](#) is that the "privileged party" **must be present** when the analyst discusses the issue (report, analysis, evidence, etc.) with the non-privileged party. (The strict interpretation is that the analyst will not talk to us unless the DA is present during the conversation. The DA cannot give the WCL permission to talk to us without the DA present.)

Q: What does the WCL consider a "privileged party"?

WCL considers the state (law enforcement or DA) the privileged party if law enforcement or prosecution submitted the evidence to the crime lab.

If the defendant submits the evidence to the WCL with an ex parte order pursuant to [165.79](#), the WCL will view the defendant as the privileged party, and the testing process and results are confidential and will not be disclosed to the state.

Q: What if the state/law enforcement have control of the evidence? Can we still request independent and confidential testing of that evidence by the WCL?

Yes, but you may need to obtain a court order for the testing.

In felony cases, the defendant can move the court for an ex parte order under [165.79](#) and [971.23\(5\)](#) for the crime lab to conduct an analyses of evidence on behalf of the defendant, without disclosing the information about the testing or the results to law enforcement or the prosecution.

In some counties, judges have granted the defendant's ex parte motion for confidential testing of evidence under [165.79](#) and [971.23\(5\)](#), even when the state previously submitted the evidence to the WCL. At least one judge considered but ultimately denied the defendant's ex parte motion for independent and confidential testing.

Please contact [Vincent Rust](#), [Tony Rios](#), or the [Homicide and Forensics Practice Group](#) if you have questions.