

## Assigned Counsel Division Newsletter

Volume 14, September 2017

### Save the Dates for Upcoming SPD Training Events

[Working as a Team: An Institute for Attorneys and Investigators](#)-September 18-22, Delavan Wisconsin [Register here](#)

[Advocating for SPD Clients who are Victims of Human Trafficking](#)-September 19, Milwaukee WI  
*More details and registration information coming soon.*

[The Basics of Handling a TPR Case from Start to Finish](#)  
October 11-13, Milwaukee Wisconsin [Register here](#)

[2017 SPD Criminal Defense Conference](#)  
November 16-17, Milwaukee Wisconsin  
*More details and registration information coming soon.*

### Need Help on a Tough Case?

[SPD Specialty Practice Groups](#) are here to assist. The agency operates a number of specialty practice groups allowing us to share specialized knowledge and expertise efficiently. Each practice group is led by SPD staff who stay current with the latest developments in the practice area and share this expertise as an advisor, mentor, and educator.

#### Specialty Practice Groups and Coordinators

[Termination of Parental Rights \(TPR\)](#): Amanda Skorr,  
Diane Rondini-Harness

[Juvenile Practice](#): Eileen Fredericks, Devon Lee, Diane Rondini-Harness (for PB contacts)

[Chapter 980](#): Robert Peterson

[Forensic Sciences](#): Vincent Rust

[Racial Disparities](#): Margaret Johnson

[Homicide Practice Group](#):  
Deja Vishny

[Immigration Practice](#):Melissa Nepomiachi, Mindy Nolan,  
Kara Rolf

### Special points of interest:

- **Save the Dates for Upcoming SPD Training Events**
- **SPD Specialty Practice Groups**
- **Free StEPP(Student Expulsion Prevention Project) Training**
- **New ACD Billing Format Going Live OCTOBER 2017**
- **Updates to ACD page on WISPD.org**
- **From the Listserve Archives:**
  - *I Want Access to the Crime Scene too.*
  - *Sua Sponte Bail Bond Increases*

### Upcoming StEPP Training

For attorneys practicing in Milwaukee or Dane County who would like to become involved in the StEPP (Student Expulsion Prevention Project), there will be a free training held at the Delafield Hotel on September 7th from 1:30pm -4:30pm, followed by a reception.

StEPP, a pilot project of the State Public Defender, recruits and trains pro bono attorneys to represent students in expulsion hearings. StEPP started in Madison, expanded to all of Dane County, and is now expanding to all of Milwaukee County.

In return for the training, each attorney is asked to represent one student facing expulsion during the 2017-2018 school year. This is a great opportunity to gain free CLE credit, network with other StEPP attorneys, and most importantly, make a difference in the life of a child.

[Register today!](#)

## Effective October 16, 2017

### New ACD Billing Format Going Live

The State Public Defender received a federal grant to enhance data collection and information processing within eOPD. This agency-wide data collection project includes changes to the private bar billing system.

**Effective, October 16, 2017**, when attorneys enter time slip information in to the billing system, attorneys will be provided specific options from drop down menus. Instructions and examples of the new dropdown menus are below.

ACD is working to develop a format that allows software management users to upload data into the new billing site.

We will continue to update users as we progress towards going live with the new system.

## Instructions for the Updated Billing system

#### Case types included:

L-Appellate Plea  
A- Appellate Trial  
V- Appellate Opened in Trial

#### Sub-Menu

Client Meeting-In Jail/Prison  
Client Letter/Email  
Client Phone/Video Conference  
Client Contact-Explain  
Legal Research-Explain  
Review Discovery  
Review Transcripts  
Investigation-Explain  
Expert Consultation  
Witness Preparation  
Legal Work Other-Explain  
Meeting/Contact (Non-Client)-Explain  
Motion for Extension  
Post Conviction Filing  
Court of Appeals Brief  
No Merit Report  
Petition for Review/No-Merit Petition for  
Other Motion/Notice-Explain  
Supreme Court Brief  
Withdrawal Motion  
Evidentiary Hearing  
Oral Argument  
Non-Evidentiary Hearing  
Other Court Appearance-Explain  
Travel To/From-Explain

#### Case types included:

B- Class A/B/C Felony  
E- Other Life Sentence  
F- Felony  
H- Homicide  
I- Co-chair Hom/Juv  
M- Misdemeanor  
N- Misdemeanor Traffic  
X- Ch 980 (original petition)  
Y- Ch 980 (co-chair)  
Z- Ch 980 (post-commitment)

#### Sub-Menu

Client Meeting-In Jail/Prison  
Client Letter/Email  
Client Phone/Video Conference  
Client Contact-Explain  
Review Discovery  
Legal Research-Explain  
Legal-Draft Motion/Documents  
Legal Work Other-Explain  
Investigation-Explain  
Expert Consultation  
Negotiation with DA  
Trial Preparation-Explain  
Sentencing Preparation  
Meeting/Contact (Non-Client)-  
Initial Appearance/Bail Hearing  
Evidentiary Hearing  
Non-Evidentiary Hearing  
Plea  
Sentencing After Plea  
Pre-Trial Court Appearance-Explain  
Jury Trial  
Sentencing After Trial  
Court Trial  
Restitution Hearing  
Travel To/From-Explain



Case types included: D- Delinquency - Felony I- Co-chair Hom/Juv J- Juvenile D- Post-Dispositional Juvenile Proceeding Q- Felony Diversion W-Juvenile Waiver
<b>Sub-Menu</b>
Client Meeting-In Jail/Prison
Client Letter/Email
Client Phone/Video Conference
Client Contact-Explain
Review Discovery
Legal Research-Explain
Legal-Draft Motion/Documents
Legal Work Other-Explain
Witness Preparation
Preparation for Hearing
Negotiation
Expert Consultation
Investigation-Explain
Meeting/Contact (Non-Client)-Explain
Detention Hearing
Plea Hearing
Pre-Trial Hearing
Waiver Hearing
Fact-finding Hearing
Motion Hearing
Disposition Hearing
Sanctions Hearing
Extension Hearing
Court Trial-JV
Revision/Change of Placement Hearing
Other Court Appearance-Explain
Travel To/From-Explain

Case type included: R-Revocation
<b>Sub-Menu</b>
Client Meeting-In Jail/Prison
Client Letter/Email
Client Phone/Video Conference
Client Contact-Explain
Obtain Client Releases
Review DOC file
Obtain Evidence CDs and Reports
Obtain Other Records
Review Discovery/Package/Credit
Investigation-Explain
Negotiation with DOC agent
Review ATR Proposal(s)/Option(s)
Subpoena Witnesses
Witness Preparation
Legal Research-Explain
Other Hearing Preparation-Explain
Meeting/Contact (Non-Client)-Explain
Client Preparation
Negotiation with DA for Sentencing
Sentencing Preparation
Revocation Hearing
Administrative Appeal/Letter Brief
Writ of Certiorari
Hearing-Explain
Sentencing Hearing
Travel To/From-Explain

Case types included: K-Intake P-Paternity S-Special Other / Miscellaneous
<b>Sub-Menu</b>
Client Meeting-In Jail/Prison
Client Letter/Email
Client Phone/Video Conference
Client Contact-Explain
In-Court Work Explain
Out-of-Court Work Explain
Travel To/From-Explain

Case types included: C-Commitment G- Chapter 55
<b>Sub-Menu</b>
Client Meeting in Facility
Client Letter/Email
Client Phone/Video Conference
Client Contact-Explain
Review Discovery
Legal Research-Explain
Legal-Draft Motion/Documents
Legal Work Other-Explain
Review Medical Records
Expert Consultation
Medical Research
Evidentiary Motions
Witness Preparation
Investigation-Explain
Meeting/Contact (Non-Client)-Explain
Pre-Trial Court Appearance
Probable Cause Hearing
Final Hearing
Pre/Post Trial Med Hearings
Post Commitment Hearing
Re-Commitment Hearing
Jury Trial
Court Trial
Other Court Appearance-Explain
Travel To/From-Explain

Case type included: T- TPR
<b>Sub-Menu</b>
Client Meeting-In Jail/Prison
Client Letter/Email
Client Phone/Video Conference
Client Contact-Explain
Review Discovery
Legal Research-Explain
Legal-Draft Motion/Documents
Legal Work Other-Explain
Investigation-Explain
Expert Consultation
Negotiation
Trial Preparation-Explain
Meeting/Contact (Non-Client)-
Initial Appearance/Bail Hearing
Pre-Trial Conference
Temporary Physical Custody Hearing
Motion Hearing
Revision/Change of Placement
Permancy Plan Review
Other Pre-Trial Hearing-Explain
Jury Trial
Court Trial
Disposition Hearing
Voluntary TPR hearing
Other Post-Trial Hearing-Explain
Travel To/From-Explain

### Looking for a more user friendly experience?

Check out updates to the Assigned Counsel Division page on WISPD.org. We have updated our [Policy and Procedures](#), [Private Bar Case Expenses](#) and [Expert Guidelines](#) pages.

Follow the link below:

[Assigned Counsel Division](#)

## From the List Serve Archives

Here we republish topics posted on Defendernet or WACDL with a summary of the selected responses.

### I Want Access to the Crime Scene Too

#### Question posted:

I'd like to move the court to order the DA to arrange for a viewing of the home where an alleged rape took place. The home does not belong to the victim or the defendant. Has anyone ever tried to do this before? Any thoughts? The homeowner seems cooperative with police and the DA generally. But, will not speak with our investigator. I'd like to see the home, etc.. as the police pictures are not very helpful.

#### Summary of Responses:

Suggested arguments: The State has been granted access to the crime scene, the defense should be granted access as part of fundamental fairness, and 6<sup>th</sup> Amendment right to pre-trial investigation. Analogously, the defense is generally allowed to retest biological material and alleged controlled substances collected by the State such as DNA, marijuana, etc...so any evidence that the State has inspected as part of its investigation should be available to the defense to also examine. Although a crime scene is not necessarily evidence like DNA, it can be argued that if the State took photos of the location then obviously they believed the layout of the crime scene was relevant; if they didn't take photos then it is still necessary for the defense to inspect in order to determine whether the complaining witnesses' account is reliable and assess possible defenses.

#### Case Law:

This passage from a Vermont case was perhaps the most on point:

[State v. Muscari, 174 Vt. 101, 114, 807 A.2d 407, 417–18 \(2002\);](#)

“A defendant's need for access to a crime scene controlled by a private third party must be balanced against the property occupant's right to privacy. Courts have generally struck that balance by requiring a defendant to make some showing that the requested intrusion is relevant and material to the defense. See [Bullen v. Superior Court, 204 Cal.App.3d 22, 251 Cal.Rptr. 32, 34 \(1988\)](#) (defendant must show plausible justification and good cause to warrant intrusion into private home); [People v. Poole, 123 Ill.App.3d 375, 78 Ill.Dec. 691, 462 N.E.2d 810, 812–13 \(1984\)](#) (defendant's request to enter private home to take pictures denied where defendant \*\*418 could not establish that pictures would be probative); [People v. Nicholas, 157 Misc.2d 947, 599 N.Y.S.2d 779, 783 \(Sup.Ct.1993\)](#) (denying right to inspect private property where no showing that investigation “would yield relevant” information different from that already received from photographs of the scene); [State ex rel. Beach v. Norblad, 308 Or. 429, 781 P.2d 349, 350 \(1989\)](#) (court did not have authority to order third party to open her home to defense counsel and expert); [Henshaw v. Commw., 19 Va.App. 338, 451 S.E.2d 415, 419 \(1994\)](#) (defense counsel must make prima facie showing on requested inspection's relevance and materiality).”

#### See also:

[State v. Tetu, 139 Haw. 207, 219–20, 386 P.3d 844, 856–57 \(2016\)](#), for a recent decision discussing the issue and reviewing other jurisdictions' treatment of issue.

**Sample Pleading:** Colorado Motion to Preserve Crime Scene

## Sua Sponte Bail Increases from the Court

*Not long ago a Wood County judge changed my client's bond sua sponte from a \$10,000 cash bond to a \$100,000 cash bond. Since that time, we have had a bond modification hearing and the judge denied our request. I then submitted a motion to reconsider and requested a hearing on the matter noting among other things that the judge did not address the issues raised in our original motion, specifically that I was not of the belief that the Court had the statutory authority to modify the bond absent a request from the State, the defense or a violation of the conditions of the existing bond. I received a written denial of the motion to reconsider and a denial of any hearing being scheduled. A brief summary of facts are below:*

*Client was arrested in 2014 for 1st Degree Sexual Assault of a Child. Appointed an attorney through the Office of the Public Defender and given a signature bond. Before trial, the defendant absconded and a warrant was issued. And then was arrested and extradited back to Wisconsin in January of 2017. The Court (different branch) ordered a \$10,000 cash bond and the previous attorney was reappointed.*

*Client hired me to represent him privately. We filed a motion for substitution of counsel along with a Motion for Continuance of trial. This was more than two weeks before trial and only asked for an additional three weeks which we knew the judge had available if he wanted to try the case then. The judge granted the motion to substitute counsel and motion for continuance; set the trial for mid-September despite there being availability in three weeks. The judge then, without a request from the State, the defense or any violations since the new \$10,000 cash bond was imposed and posted, raised the defendant's bond to \$100,000 cash.*

### **Summary of Issue:**

Does the judge have the authority to do this? My reading of Wis. Stats. [969.01](#), [969.03](#), [969.08](#) and [969.09](#) tell me that there is no statutory authority to do so. It should be noted that the judge is claiming "its own inherent authority, which is actually supported in subsection (9) in revocation of bond cases" (which really doesn't apply here.)

### **Responses:**

Generally speaking, bail conditions (which would include the monetary amount) are reviewed for an erroneous exercise of discretion. [State v. Wilcenski, 2013 WI App 21](#).

On the one hand, raising bond by a factor of 10 without any change of facts suggests that the decision was arbitrary at best, punitive at worst, and either way, not a proper exercise of discretion.

On the other hand, there is case law holding that judges are not beholden to the discretionary decisions of prior judges in the same case.

**Wilcenski** also observes, in footnote 2, that bail conditions may be challenged by petitioning for a permissive (aka interlocutory) appeal. I don't know how often those are attempted, let alone granted. If that is within your client's budget, you might better your odds if you can find an Eighth Amendment excessive bails argument.