

Assigned Counsel Division Newsletter

Volume 6, October 2014

SPD Budget Request for Increased Private Bar Funding

The SPD's budget request for the 2015-2017 biennial budget has been submitted and contains several items related to assigned counsel attorneys.

The Public Defender Board opted to seek three increases related to assigned counsel compensation. First, the language limiting reimbursement for mileage was recommended to be simplified so that any travel over 30 miles (including roundtrip) can be reimbursed regardless of county of residence or location of principle place of business. Second, an administrative overhead payment is being sought to provide a \$1000 supplement if over 25 cases are taken in a year; \$2000 if over 50 cases. Finally, the hourly rate increase was proposed as a trifurcated structure. Under the plan, attorneys would be compensated at either \$45 per hour for commitment, juvenile, misdemeanor, and misdemeanor traffic case types; \$50 per hour for protective placement, felony, felony delinquency, and revocation case types; and \$60 per hour for Class A/B/C felony, homicide, TPR, juvenile waiver and Ch. 980 case types.

Based on formulaic cost re-estimates, SPD is also asking for an increase in funding for assigned counsel compensation independent of a change to the hourly rate of compensation.

The agency budget requests will now be reviewed by the Department of Administration and the Governor's office. The Governor will introduce the budget to the Legislature in February 2015.

Special points of interest:

- **Standard Police 10 Codes**
- **Ancillary Representation**
- **Billing tip: Expert Invoices**
- **Collateral Consequences**
- **New Appellate Resources**
- **2014 SPD Conference**
- **New 980 Practice Coordinator**
- **News from SPD Immigration Practice Group**
- **Welcome to the newly certified Private Bar Attorneys**

Check out the SPD Conference Agenda!

This year's conference includes a DOC presentation on using COMPAS, a session on how to challenge COMPAS (SPD appellate division), discussion of Forensic Toxicology and the cause of death in Len Bias homicide cases (Dr. Brian Peterson), and litigating abusive head trauma (shaken baby cases) by Keith Findley and Kate Judson of the UW Law School.

Find full agenda here:

<http://wispd.org/>

Invoice Processing Times and Budget

We are currently processing and approving bills for payment within approximately 40-45 business days. Please know that ACD and fiscal staff are processing bills and payments as quickly as possible. We have been and will continue paying more than \$1.8 million per month through the end of this fiscal year.

Police Call 10-Codes

Wisconsin law enforcement agencies have adopted policies regarding the use of ten codes. See, for example, the City of LaCrosse Police Department Manual: <http://www.cityoflacrosse.org/DocumentCenter/Home/View/385>

10-1 unable to copy

10-2 signal good

10-4 ok

10-6 busy unless urgent

10-7 out of service

10-8 in service

10-9 repeat

10-10 fight in progress

10-12 stand by

10-16 domestic disturbance

10-19 return to

10-20 current location

10-21 phone call

10-22 disregard

10-23 arrive on scene

10-24 leaving scene

10-25 meet in person

10-26 traffic stop

10-27 drivers license info

10-28 license plate

10-29 checking for wants and warrants

10-30 unnecessary use of radio

10-32 man with gun

10-33 emergency

10-36 correct time

10-38 suspicious vehicle

10-39 lights and sirens balls to the wall

10-40 silent run

10-41 start tour of duty

10-42 end tour of duty

10-43 info

10-44 permission to leave area

10-46 assists motorists

10-51 tow truck needed

10-54 live stock on highway

10-55 drunk driver

10-56 drunk pedestrian

10-57 hit and run accident pd, pi, f

10-59 military convoy or funeral escort

10-60 squad in vicinity

10-63 prepare to write this down

10-74 negative

10-75 put me in contact with

10-76 en route

10-78 officer needs assistance

10-80 high speed pursuit

10-89 bomb threat

10-95 subject in custody

10-96 mental subject

10-99 active wants and warrants

Sign Up for Defendernet

Defendernet is a listserve for criminal defense attorneys. Defendernet comprises SPD staff and private lawyers. As with other listserves, the purpose is to support each other's work and share information.

To sign up, please contact:

acd@opd.wi.gov

Kathy's Corner

Ancillary Representation

Question: I represent a client in a drug case. The State seized his vehicle and has filed a civil forfeiture action. Can I represent him in the civil forfeiture action?

Answer: Qualified yes, if the criminal charges are still pending.

Attorneys may represent a client in a civil property forfeiture action only if it arises from another case in which the SPD represents the client. Attorneys may not represent third parties, and may not litigate civil forfeitures after a final adjudication of the primary case, unless the representation is necessary to safeguard the client's Fifth Amendment rights.

SPD Appellate News

The SPD Appellate Division has posted new checklists for filing post conviction motions and no-merit reports.

Appellate checklist: <http://wispd.org/index.php/for-the-legal-practitioner/spd-appellate-division/appellate-templates-forms>

Sample No-Merit Reports available on the SPD website: <http://www.wispd.org/index.php/39-for-the-legal-practitioner/spd-appellate-division/275-no-merit-report-samples>

Appellate Case Billing Tip

Q: When should I submit a final bill for work done on this appeal?

A: Final billings can be submitted for each level in an appellate case.

For example, you have completed the work for the post conviction motion phase of your appeal. The case will now be going to the court of appeals. You can submit a final billing for the post conviction work that was completed. Once you have submitted an invoice as final, contact Lisa Cory (608)266-9580 and she will assign the case a new SPD identification number.

Advising clients on the Collateral Consequences of Criminal Convictions

Two new collateral consequences documents have been posted on the SPD website.

The first is a summary of employment consequences of felony convictions under Wisconsin law. wispd.org/images/AppellateFolder/FelonyConvictionsandEmploy.pdf

The second is an interview form that can help identify the potential employment consequences likely to be of most concern to a client. wispd.org/images/AppellateFolder/ClientEmployInfo.doc

ACD Billing Tip: Submitting receipts for Experts and Investigators

ACD requires prior approval for any investigator, expert, & expense greater than \$50.00. The expense request must be submitted through your online billing account.

After you obtain written approval, please provide this to your expert or investigator. It is important that they are aware of the approved rate and hours, as the attorney may be responsible for costs exceeding the approved amount.

Once you have received the billing statement from your expert, review it to be certain that tasks are itemized, dated, and that the invoice does not exceed the approved amount for this expense.

After you have reviewed the invoice, you can submit the receipt directly to ACD by fax:608-261-0625 or email: acd@opd.wi.gov

OFFICE OF THE WISCONSIN STATE PUBLIC DEFENDER

2014 ANNUAL CRIMINAL DEFENSE CONFERENCE

Criminal Defense Practice in the Evidence-Based Era

November 20 and 21, 2014

Hyatt Regency Milwaukee

333 West Kilbourn Avenue

Milwaukee, Wisconsin

Early registration ends October 31.

Follow the link below to register:

<http://wispd.org/index.php/for-the-legal-practitioner/training>

The SPD Conference will be approved for approximately 15 CLE credits, including 3 ethics credits.

Conference registration begins at 7:00 am on Thursday November 20 outside the Regency Ballroom, 2nd Floor.

Find full Conference agenda here:

http://wispd.org/images/2014_Conference_Agenda2.pdf

Welcome Newly Certified Attorneys

We would like to give a warm welcome to all our newly certified attorneys to the Private Bar appointment list. Also, a thank you to all attorneys returning to take case appointments. These are the attorneys that have joined us in the last few months.

| | |
|-----------------------|---------------------|
| Daniel Hellman | Monroe /La Crosse |
| Lauria Lynch-German | Washington |
| Patrick Ritter | Winnebago/Outagamie |
| Hans Thompson | Outagamie |
| Brittany Kachingwe | Milwaukee |
| Joseph Martell | Ashland/Bayfield |
| Jared Boucher | Milwaukee |
| Joseph Geraldson | LaCrosse/Vernon |
| Steven McDonald | Milwaukee |
| Derek Hawkins | Waukesha |
| Jane McDonough | Milwaukee |
| Andrew Rider | Milwaukee/Waukesha |
| Tristan Eagon | Dane |
| Adam Galaviz | Waukesha |
| Greg Pittman | La Crosse |
| Matthew Martz | Milwaukee |
| Ayamie Metzger | Milwaukee |
| Jameson Whitney | Dane/Iowa |
| Ethan Vollmer | Winnebago |
| Amanda Ashley | Milwaukee |
| Celsea Whitley | Polk |
| Eugene Loftin | Racine |
| Daniel Repka | St. Croix |
| Timothy Geary | Brown/Outagamie |
| William T.Croke | Milwaukee |
| Micabil Diaz-Martinez | Dane |
| Marcel Oliveira | Dane |
| Laura Waite | Waupaca |
| Alexander Golubiewski | Brown |
| Megan Reed | Dane |

SPD News From Around the State



New Chapter 980 Practice Coordinator

Larry Peterson, 980 Practice Coordinator extraordinaire, has left the agency to move to Connecticut. We will greatly miss him and all that he added to the agency, especially how he handled the 980 practice.

Steve Prifogle will take over the practice coordinator duties. Steve started with the SPD in May 1983 and worked in Milwaukee Trial. He transferred to the Ozaukee County satellite office of the West Bend office in July 1993. Steve returned to Milwaukee Trial in July 2005 where he has been handling only 980s ever since.

Steve has talked a number of times about how to insulate your client (at the trial level) from future 980 exposure. So if you have a 980 case or trial level sex crime please contact him at (414)227-4574 or email at prifogles@opd.wi.gov

From the Immigration Practice Group: Board of Immigration Appeals decision: Matter of Gustavo Ferreira

Where a State statute on its face covers a controlled substance not included in the Federal controlled substances schedules, there must be a realistic probability that the State would prosecute conduct under the statute that falls outside the generic definition to defeat a charge of removability under the categorical approach.

Note that DHS used a transcript of the plea colloquy to prove its case. Follow the link below for the decision:

<http://www.justice.gov/eoir/vll/intdec/vol26/3815.pdf>