

WISCONSIN OFFICE OF THE STATE PUBLIC DEFENDER

CHAPTER 51 CONTRACT Sample Contract

THIS AGREEMENT, between <<name of attorney>> (Contract Attorney) and the Office of the State Public Defender (OSPD), provides for the representation of persons subject to proceedings under Chapter 51 in Milwaukee County, Wisconsin. No work may proceed prior to the Governor's signature.

I. TERMS OF AGREEMENT—GENERALLY

This agreement shall take effect on July 1, 2019 and shall terminate on June 30, 2020. There is a possibility of up to two one-year extensions for this agreement. The Contract Attorney shall provide competent professional legal representation in accordance with Chapter 977, Wis. Stats., Wis. Admin. Code PD 4, the ethical standards promulgated by the Wisconsin Supreme Court, and the "Minimum Attorney Performance Standards" which are attached as Appendix A.

II. TYPES OF CASES TO BE APPOINTED

The Contract Attorney will provide representation for persons appointed to them by the OSPD under Ch. 977 Wis. Stats for the following case types:

Civil Commitment Cases [§51.35(1)(e); 51.45(12)(c)(2); 51.45(13)(b)(2); 51.45(13)(d); 51.61(g); 51.20(3), (5) Stats.]:

Commitment cases include cases in which a petition has been filed under Chapter 51 against an adult. Examination hearings (including hearings to modify or cancel a commitment order), recommitments, extensions, and changes in placement brought after the original case is closed are counted as separate Commitment cases. Cases involving children as subjects of commitment proceedings are classified as Other Juvenile cases and would not be included under this contract. Petitions for reexamination, conditional release, or revocation of conditional release under §971.17 and proceedings under §971.14 are not included under this contract.

If a hearing for involuntary medication is scheduled more than sixty (60) days after a commitment order has been entered, the OSPD will open a separate commitment case under §51.61(1)(g)3. Otherwise, a request for involuntary medication filed with the original proceeding is considered part of the original case.

If the case is settled with a "hold open" agreement, the attorney remains on the case for sixty (60) days after the agreement is entered (unless the case is finalized at an earlier date). If a case is reopened after 60 days because of an alleged breach of the "hold open" agreement, a new case is opened.

III. SCOPE OF REPRESENTATION

In civil commitment cases, an attorney's representation ordinarily ends after the final commitment hearing, explanation of appeal rights, and (if necessary) the filing of a Notice of Intent to Pursue Post-Commitment Relief (NOI). The contract attorney is also responsible for any medication hearings held during the case or scheduled, at the time of the final commitment hearing, to be held within sixty (60) days.

IV. INTAKE DUTIES

As part of this contract, the Contract Attorney agrees to provide intake services on a rotational basis of no more than one day per week during the term of the contract. Intake duties include the following:

Picking up new petitions, checking CCAP for pending criminal cases, notifying the OSPD Milwaukee office about new detainees with pending criminal cases or who will be charged based on conduct resulting in detention, conflict checking, notification of OSPD mental health office of conflict cases needing assignment, checking to see if clients have been discharged, checking for client location, conducting initial client interviews.

OSPD staff will provide training to Contract Attorneys on providing intake services.

V. CONFLICTS

Contract Attorneys will cooperate with the appointment staff of the OSPD to promptly determine whether a conflict of interest should preclude appointment in particular cases. Contract Attorneys should consult their records to ensure that their duty to a proposed new client will not adversely affect any duty to a current or former client as defined in SCR 20:1.7 and 1.9. Contract Attorneys should not represent two or more individuals whose detentions result from the same incident.

VI. EFFECTIVE REPRESENTATION

Contract Attorneys will provide effective representation in all matters. For Ch. 51 proceedings this includes, but is not limited to:

- A. explaining the civil commitment process to each client, including various time limits and period of potential detention or commitment, their rights and options for litigation or settlement, and court procedures;
- B. conducting an interview with the client to solicit information regarding the conduct that resulted in detention and the client's wishes with respect to the petition;
- C. reviewing each client's medical chart to determine any jurisdictional or service defects and to prepare for advocating for the client at any hearings;
- D. providing information about the client's right to appeal.

VII. NUMBERS OF CASES AND PAYMENTS

- A. The OSPD intends to award no more than ten (10) contracts to proposers. Each contact will be for between a minimum of cases and maximum of cases at a rate of \$239 per case.
- B. The Contract Attorney understands that they are not guaranteed appointment of the exact number of cases set forth above, but that the number represents an estimated projection based on information available as of the date of signing. The maximum number of cases set forth above may be increased upon the mutual agreement of the parties.
- C. No Contract Attorney representing clients under this contract may solicit or receive compensation from those clients, or on behalf of those clients, in addition to any compensation Contract Attorney has received or expects to receive from the OSPD, pursuant to this contract.

VIII. RELATIONSHIP BETWEEN THE CONTRACT ATTORNEY AND OSPD

The Contract Attorney and the OSPD are separate entities. The Contract Attorney is at all times an independent contractor.

_____ Date: _____

Contract Attorney

_____ Date: _____

Kathleen Pakes
Director–Assigned Counsel Division
Office of the State Public Defender
on behalf of Kelli S. Thompson, State Public Defender

Approved pursuant to §20.903, Wisconsin Statutes

Governor or Governor’s Designee

APPENDIX A

Wisconsin Office of the State Public Defender Minimum Attorney Performance Standards for Appointed Private Bar Counsel

The following are the minimum attorney performance standards for appointed private bar counsel adopted by the Wisconsin Office of the State Public Defender (OSPD). These standards require an attorney to do more than merely comply with Supreme Court Rules and stay above the threshold for ineffective assistance of counsel.

These standards reflect the commitment in our mission statement to provide high quality legal services.

“Appointed attorney” refers to an attorney in private practice who is certified and appointed by the OSPD to represent clients eligible for OSPD services. Except for those rules which reference issues peculiar to the private bar, e.g. certification, these standards reflect the same expectations the Wisconsin Office of the State Public Defender has for staff attorneys.

Generally

1. An appointed attorney shall comply with all Supreme Court Rules, including both the Rules of Professional Conduct in SCR Chapter 20 and the Standards of Courtesy and Decorum in SCR Chapter 62.
2. An appointed attorney shall comply with local court rules in the counties in which s/he practices.
3. An appointed attorney shall comply with statutes, administrative code rules, and OSPD policies and procedures related to public defender appointments, certification and billing.
4. In all cases, including, but not limited to, those under Wis. Stats. Chapters 48, 51 and 55, an appointed attorney shall function as adversary counsel.
5. An appointed attorney shall maintain an updated client file, detailing all action taken on the case and including copies of all relevant court filings and other materials. The file is the property of the client and must be tendered to the client upon request at the close of the case unless the file is being forwarded to successor counsel. An attorney should print the electronic court record for the client file or should maintain electronic records in a format that allows the attorney to print documents for the client file after the case is closed. Attorneys lose access to the e-filing system once a case is closed; therefore, attorneys should not rely on the court system for record management. For recordings and other relevant materials not susceptible to printing, the attorney should take reasonable steps to ensure that the materials are available and accessible in a format that can be delivered to the client or successor counsel.

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6. An appointed attorney shall retain all client files not turned over to the client or successor counsel for a minimum of six years and follow all Supreme Court rules regarding the disposal of client files and property.
7. An appointed attorney shall cooperate fully with successor counsel. This includes promptly delivering the client file and answering questions about the earlier representation, consistent with ethical obligations.
8. An appointed attorney shall cooperate with inquiries from the OSPD regarding the status of appointed case, performance issues, or billing issues in appointed case.

Competence and Diligence

1. An appointed attorney shall accept only those cases for which s/he can provide competent representation. Certification by the OSPD for a particular case type or category is not the same as competency to provide services in any individual case.
2. An appointed attorney shall personally act as an advocate for the client and provide zealous, effective, and high-quality representation to the client at all types of proceedings. An appointed attorney may arrange for another certified attorney to provide coverage of a routine appearance in the event a scheduling conflict cannot be avoided.
3. An appointed attorney shall know to a reasonably proficient standard all relevant Wisconsin substantive law and procedure and keep abreast of developments in substantive and procedural law.
4. An appointed attorney shall meet all statutory and court-imposed deadlines.
5. An appointed attorney shall meet promptly with the client, in person, whether in custody or not. Ordinarily, the first meeting with the client should take place as soon as practicable after appointment. In appellate matters, an in-person meeting may be delayed until the attorney has had a chance to review the file and transcripts.

Communication

1. An appointed attorney shall explain the role of attorney and attorney-client relationship, determine background information and solicit the defendant's version of the facts.
2. An appointed attorney shall consult with the client as often as necessary to elicit the information necessary to build a defense.
3. An appointed attorney shall keep the client reasonably informed about the status of his/her case, defense strategies, tactical choices, consequences of conviction, and explain the nature and purpose of court proceedings.

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4. An appointed attorney shall promptly respond to the client's reasonable requests for information, including providing a copy of any motion or brief filed in the client's case upon the request of the client.
5. An appointed attorney shall present and consult with the client about all plea negotiations and offers of settlement.
6. An appointed attorney shall explain matters to the extent reasonably necessary to allow the client to make an informed decision regarding the case.

Practice Standards – Trial

1. An appointed attorney shall actively represent an in-custody client on the issue of release throughout the case.
2. An appointed attorney shall review and examine the complaint and accompanying papers, information or other charging document and determine the sufficiency of the same.
3. An appointed attorney shall obtain and review all discovery materials, including but not limited to police reports, all written or recorded statements of the defendant, names of witnesses to any written or recorded statements, a copy of the client's criminal record, if any, and statements of witnesses, a copy of the criminal record of prosecution witnesses; and physical evidence and/or reports of physical evidence.
4. An appointed attorney shall arrange for the client to review discovery materials in so far as it is necessary for the client to make informed decisions about his/her case. An attorney should provide the discovery necessary to properly inform the client.
5. An appointed attorney shall cause an investigation of the facts including attempting to interview appropriate defense or prosecution witnesses.
6. An appointed attorney shall analyze all legal issues presented in the case. In consultation with the client, and attorney shall decide which issues have merit and make strategic decisions about issues to be pursued. An appointed attorney shall then file and argue appropriate motions.
7. An appointed attorney shall utilize experts, investigators, interpreters and other professional support where appropriate.
8. An appointed attorney shall consider all appropriate available diversion, treatment court, and other alternatives to prosecution.
9. An appointed attorney shall prepare the case for trial or hearing, as appropriate, and advise the client of the procedures to be followed and his/her rights.
10. An appointed attorney shall prepare a plan or argument for sentencing for the client if the client is convicted, and advise the client of the sentencing procedures.

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11. An appointed attorney shall inform the client of his/her right to appeal, file a notice of intent to pursue post-conviction relief if requested to do so by the client, and make a proper referral to the OSPD Appellate Division.
12. An appointed attorney shall notify the local OSPD office as soon as the attorney moves to withdraw. If in writing, the attorney shall provide the local OSPD office with a copy of the written motion prior to the hearing on the motion to withdraw.
13. An appointed attorney assigned to handle cases involving the revocation of probation, Extended Release or parole, rescission of parole, and re-confinement shall do all of the following:
 - a. Obtain and review all DOC documents relevant to the administrative or court hearing.
 - b. Where appropriate, review material held by the DOC including but not limited to the client's file held by his/her agent.
 - c. Review information regarding the offense(s) underlying the supervision.
 - d. Coordinate representation with any attorney handling a new criminal matter for the same client.
 - e. Insure that issues regarding sentence structure and sentence credit are properly resolved.
 - f. Represent the client through the administrative hearing.
 - g. File an administrative appeal unless after consultation with the client, the client consents to foregoing the administrative appeal.
 - h. Review the decision on the administrative appeal and determine if grounds exist for filing a Writ of Certiorari; advise the client whether viable grounds to file a Writ of Certiorari exist, and consult with the client regarding whether to pursue such a Writ if the attorney has determined there are viable grounds; pursue a Writ Certiorari when appropriate.
 - i. Represent the client in the related re-confinement hearing or sentencing after revocation, unless successor counsel is appointed.

Professionalism and Ethics

1. An appointed attorney shall treat the client, the client's family, and other members of the public with courtesy and respect. An appointed attorney should be mindful of the rules related to confidentiality and loyalty to the client when speaking with family members and others.

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2. An appointed attorney shall maintain civility and respect towards the court's courthouse staff, prosecutors, law enforcement, local public defender office staff, and members of the public.
3. An appointed attorney shall maintain a system of conflict checks.
4. An appointed attorney shall maintain his/her skills and keep up with changes in the law and the practice of law. An appointed attorney will report his/her approved CLE credits to the OSPD as required by the administrative code.
5. An appointed attorney shall not appear in the workplace, including, but not limited to a courthouse, jail or other correctional facility, treatment or other placement facility, nor meet with a client, the client's family, or a witness in a case while impaired by drugs or alcohol or with a noticeable odor of intoxicants.
6. An appointed attorney shall not accept a case appointment for a client with whom s/he has had a personal or sexual relationship. An appointed attorney shall not accept a case appointment for a client for whom s/he is or was the guardian or protective payee.
7. An appointed attorney shall promptly notify the OSPD Assigned Counsel Division (ACD) Director if the attorney has been arrested or charged with a crime. This notification shall occur within 24 hours of arrest or charging.