

Wisconsin State Public Defender (SPD)
MINIMUM ATTORNEY PERFORMANCE STANDARDS
APPELLATE DIVISION

Public Defender staff and appointed private bar attorneys are expected to meet the following minimum performance standards in postconviction and appellate cases. The attorney shall:

1. Provide zealous, effective and high-quality representation to the client at all stages of the appointed case.
2. Know to a reasonably proficient standard all relevant Wisconsin substantive law and procedure, be familiar with federal law and procedure, and keep abreast of developments in substantive and procedural law.
3. Comply in all respects with the Rules of Appellate Procedure; Wis. Administrative Code ch. PD, other rules, laws, and statutes relevant to the case; the Rules of Professional Conduct for Attorneys and SPD Policies & Procedures.
4. Interview the client to determine the client's position or goals in the appeal and to detect and explore issues or concerns not reflected in the record. The attorney is expected to speak personally with the client. The attorney shall be available for written and telephone consultation with the client.
5. Provide the client with general information regarding the process and procedures which will be undertaken. Keep the client informed of all significant developments in the client's case. Provide the client with a copy of each substantive document filed in the case by all parties (prosecution, defense, guardian, amicus, etc.), except when not permitted by confidentiality or court rules.
6. Address issues of bail (especially for the client with a short sentence) or release pending appeal (especially in ch. 48, 51, 55 and 938 cases), jail credit and restitution, and refer such matters to the trial attorney when appropriate.
7. Thoroughly review the complete circuit court record, all relevant transcripts and the presentence investigation report to identify issues of arguable merit. When warranted, counsel shall also thoroughly review the trial attorney's file, exhibits, discovery materials or other records; consult with the trial attorney; and investigate alleged facts or potential issues outside the record.
8. Request and, if approved, utilize experts, investigators and interpreters when appropriate.
9. Discuss with the client the merits and the strategy considerations - which include both the potential risks and benefits - of pursuing all identified issues. While it is the client's decision to decide whether to appeal and what remedy to seek, it is counsel's obligation to determine which issues have merit and the manner in which they will be pursued. Counsel, consistent with *Jones v. Barnes*, 463 U.S. 745 (1983), need not raise every non-frivolous argument and may sift and winnow out weaker issues for strategic advocacy purposes. Counsel must also consider that counsel's failure to raise an issue on direct appeal may prevent the client from raising the issue in a subsequent s. 974.06 collateral review proceeding, absent sufficient reason, consistent with *State v. Escalona-Naranjo*,

- 185 Wis. 2d 168, 517 N.W.2d 157 (1994). If the client insists on pursuing a meritless issue or one that the attorney has winnowed out consistent with *Jones v. Barnes*, the attorney shall fully inform the client of the options (to proceed as counsel recommends, *pro se*, or with privately retained counsel) and the consequences of each option.
10. If the attorney is of the opinion that a case contains no issue of arguable merit, communicate that decision to the client before filing a no-merit notice of appeal or no-merit brief. The attorney must inform the client of any right to a no merit report under the statutes and laws of this state. The attorney must inform the client of the client's rights and attorney's obligations under Wis. Stat. Rules 809.107 (5m) or 809.32. The attorney must inform the client, consistent with *State ex rel. Flores v. State*, 183 Wis. 2d 587, 516 N.W.2d 362 (1994), of the client's options (to have counsel file the no-merit report, to discharge counsel and proceed *pro se* or with privately retained counsel, or to have counsel close the case with no court action) and the possible consequences of each option, including the disadvantages of proceeding without counsel. The attorney must document this exchange and send a letter to the client confirming the client's choice.
 11. When filing any motion, conform to the applicable local court rules and practice procedures. Postconviction or postjudgment motions should contain carefully drafted nonconclusory factual allegations and appropriate citations to the record and law warranting relief. It is the attorney's responsibility to seek extensions for the circuit court to decide motions where appropriate. The attorney shall ensure entry of a written order disposing of the motion.
 12. When filing a brief, conform to the applicable rules of the court in which the brief is being filed. All briefs shall have a professional, neat appearance free of typographical errors or misspellings. Briefs must adequately and accurately state the facts of the case and contain complete and accurate record citations. Briefs shall make appropriate use of legal authority referenced by a consistent method of citation that conforms to court rules or, where no rule exists, the *Harvard Citorator*. Briefs shall utilize federal and foreign jurisdiction cases and non-case reference materials such as law reviews, treatises, and scientific works where appropriate.
 13. Inform the client of his or her rights and the attorney's obligations in regard to proceeding to the next appellate court level and take steps to ensure that such rights as fall within the scope of the attorney's appointment are not procedurally defaulted.
 14. Respond in a prompt and forthright manner to all inquiries and requests for information from the client, the parties, opposing counsel, the SPD, the court, the clerk of court, and any successor attorney.
 15. Maintain a complete up-to-date case file for every case. The file shall contain, at minimum, all correspondence, including a closing letter or memo; copies of all documents filed; proof of service for all transcripts, court records or other papers that trigger a time limit; copies of all court orders or decisions; notations in summary form as to all action taken, advice given, and telephone and in-person communications; a record of documents provided to the client; and a case activity log or voucher that documents the attorney's time spent on the case.

16. At the termination of representation, inform the client in writing of the reason for closing the file and any options for further action the client may have on direct appeal. If counsel cannot contact the client via mail, the closing information and the reason why the closing letter was not sent should be recorded in a memo to the file.
17. When requested at the termination of representation, promptly deliver to the client or the client's successor attorney the full contents of the client's case file. Note that, pursuant to Wis. Stat §972.15 (4) and (4m), the attorney may forward the attorney's copy of the presentence investigation report to a successor attorney, but may not forward it to the client without prior authorization from the circuit court.
18. Promptly close the file upon completion of representation and submit case closing documents. Retain the client file consistent with the Rules of Professional Conduct for Attorneys and SPD Policy.
19. Cooperate with any successor attorney in the case.

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