

Assigned Counsel Division Newsletter

Volume 19
November 2018

And the Winner Is...

The Wisconsin State Public Defender appreciates the strong pool of dedicated private bar lawyers willing to represent indigent clients.

To recognize the contribution of the private bar, we asked for nominations for private bar lawyers who have consistently displayed great dedication and excellence representing SPD clients and who have worked to help improve services for indigent defense.

The nominations were impressive. With great difficulty we forwarded a list of finalists to the SPD Board for ultimate selection.

We are pleased to announce the Wisconsin State Public Defender Board selected Matthew Kirkpatrick as the winner

of the first annual ACD Private Bar Award! The Board was very impressed with the dedication he has shown to public defender clients and the Agency.

Congratulations to...

**Matthew
Kirkpatrick**

Inside this issue:

Companion vs. Bundling	2
Indigent Witness Costs	2
To Fax or not to Fax	3
2018 CLE Requirements	3
6 Year Rule	4
Policies and Procedures	4
Paying 3rd Parties	5
Year End Tax Forms	5
Payment Less Than Expected	6



Pictured above from left to right: Regina Dunkin (Public Defender Board Vice-Chair), Matthew Kirkpatrick and Daniel Berkos (Public Defender Board Chairman)

Companion Cases VS. Bundling

It is hard to believe that our updated billing system is now over a year old. We have worked with many of you to refine the process. During the last year, we have found that there is some confusion between bundling and companion cases.

Let's take a look at what the auditors call companion cases. If you are working on a client with multiple cases, you CAN bill those cases on one invoice IF the drop-down menus are the same. If the drop-down menus are not the same, you will need to bill the cases separately.

For example, the drop down menus for a misdemeanor and a felony are the same so you could bill all felony and misdemeanor cases for that client on ONE invoice and send in an invoice with a \$0.00 amount on the remaining cases.

If you represent a client on a felony/ misdemeanor AND a revocation, you need to submit 2 invoices. One invoice would cover the time spent representing on the revocation matter and the other would be for the time spent representing on the felony and/or misdemeanor matter(s).

Let's take a look at the time slips and bundling entries. This is where we see the most errors. It is important that the data is accurate.

You CAN bundle like time slip entries for the **same** day.

- *Calls to/from client (x3)*
- *Email to/from DA (x2)*
- *Text messages (x7)*

If the tasks occur on **different** days, they must be listed as such.

You **cannot** bundle different activities on one day into one time slip entry.

For example:

- *Conf. w/DA; letter to client (2x); hearing prep*

This line should be divided on three lines:

- *Negotiation with DA;*
- *Client letter/Email;*
- *Legal Work Other-Explain*

Remember, you should be billing for actual time worked. You can bill to 2 decimal points.

We hope this helps better explain the difference between companion cases and when they can be billed together and bundling tasks on the time slips. We want to make sure that we have the most accurate information.

If you have any questions, please do not hesitate to contact us at 608-261-0632 or ACD@opd.wi.gov.

Indigent Witness Cost is a County Expense

Costs associated with indigent witnesses are the county's responsibility.

Certain costs can be levied to a defendant as part of the sentence following conviction, but until the defendant is convicted, all un-exempted costs are allocated to the county.

The earliest expression of these principles pre-dates statehood and can be found in the Revised Territorial Stat-

utes of 1839. Originally, all costs, including salaries of judges and prosecutors, as well as all costs for indigent defendants, were county expenses. Very early on the courts soundly rejected Dane County's attempt to relieve itself of responsibility for indigent defense costs. See *Carpenter v. County of Dane*, 9 Wis. 249 (1859) (*The "duty of the court and the obligation of the county" to pay*

"expenses incident to the administration of criminal law," including appointing "counsel to criminals unable to secure that counsel" are "equally clear & manifest."). Shortly thereafter, when the legislature enacted a statute that in effect said that although the county had to appoint counsel, it did not have to pay counsel, the Wisconsin

Indigent Witness Cost is a County Expense

Continued from page 2

Supreme Court again rejected Dane County's claim and again held the county responsible for paying indigent defense costs. County of Dane v. Smith, 13 Wis. 654 (1861). Also see, County of Jefferson v. Besley, 5 Wis. 134 (1856) (Affirming circuit court's ruling that the county was responsible for paying heat and light expenses for the county courthouse); and, more significantly in relation to the issue presented here,

Hutt v. Supervisors of Winnebago County, 19 Wis. 128 (1865) (with respect to costs for defense witnesses, "if the defendant [is] unable to pay, or prove[s] insolvent...or the prosecution fail[s], then the fees [are] to be paid from the county treasury. What fees? Obviously the same that would [be] taxed against the defendant if he [is] convicted.").

As it relates to the costs associated with the attendance of

an indigent witness, the court should make the following findings 1) the client is indigent, and order a subpoena for the production of that witness; and 2) the court should also find the witness is indigent and refer expenses related to the production of that witness to the county for payment. See *Wis. Stats. 885.09 Compensation of Indigent Witness.*

To FAX or not to FAX That is the question

That IS the question—we are in the process of phasing out our fax machine which is on its last leg. With e-filing, the day of the fax has ended and the scanner has emerged.

When sending your backup documentation for your

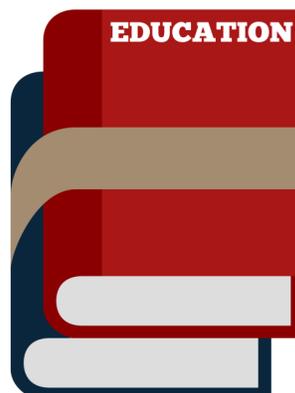
invoices (receipts, bills from experts/investigators, etc.), please send an electronic copy to ACD@opd.wi.gov.



2018 SPD CLE Requirement

All private bar attorneys must complete and report six credits of continuing legal education each calendar year in SPD case type areas. Credits are reported through your online billing site.

If you have questions about your current reported CLE credits or SPD credit requirements, please contact State Public Defender



Assigned Counsel Division at:
608-261-0632 or
ACD@opd.wi.gov

If you need 2018 CLE credits: please visit our Training Division's webpage for upcoming SPD CLE classes and current online training courses.

The Six Year Rule

With the new year fast approaching, we thought it would be a good time to remind everyone that Article 8, Section 2 of the Wisconsin Constitution prohibits payment of an invoice submitted more than 6 years after the

conclusion of a case. That's right—you have only 6 years to submit an invoice.

Invoices that are not submitted within the 6 year time frame will be reduced to \$0.00.

We do not want this to happen to any of you, so please take some time to review your "to be billed" cases. If you need help, please don't hesitate to contact our office.

Policies and Procedures

Our website is updated on a regular basis to reflect any change in policy, procedure or form needed to conduct SPD business. With the start of a New Year right around the corner, it is a good idea to review the policies and procedures. You can find all Assigned Counsel Information on our website by [clicking here](#).

If you have questions about **DOC records fees, subpoena fees, witness fees, E-filing fees or Wisconsin Supreme Court filing fees**, you can find that information by [clicking here](#).

Transcription services, interpreter fees, discovery payments and medical records should be billed directly to the SPD by the service provider. You can find more information by [clicking here](#).

It is especially important to be aware of the process for ordering medical records for an indigent client. The amount providers are able to charge indigent persons is at a substantial discount from that of private pay clients.

Attorneys should not pay out of pocket for medical records, and attorneys MUST inform the provider up front the client is indigent.



If attorneys fail to provide proof of indigency, or pay the standard fee, attorneys will have to recoup the difference by contacting the record provider and providing them with a copy of the Order Appointing Counsel. This, however, is not guaranteed to happen. You can find more information by [clicking here](#).

Experts and investigators are an integral part of our business. You can find information about how to request investigators and experts by [clicking here](#).

For **travel related expenses**, you can be paid for travel time and mileage if the travel takes you out of the county in which your office is located. If your travel is within the county in which your office is located, you will only be paid for the mileage at the current rate set by the State of Wisconsin unless you are traveling more than 30 miles one way in the same county. For information about travel reimbursement, [click here](#).

As a matter of policy, SPD will pay only for the **original client file**. We do not pay for a second copy for your records if the original is given to the client. Additional information related to case expenses can be found if you [click here](#). If you have any additional questions, please feel free to contact an ACD auditor at 608-261-0632 or at ACD@OPD.WI.GOV.

Auditors are available 7:30-4:00 Monday through Friday.

Please Pay Third Parties Promptly

From time to time ACD is contacted by investigators, experts, or other third parties that have performed work for private lawyers on SPD cases, and have not been paid. Generally, these professionals are calling because the attorney has received payment for the expert service but has not promptly paid the professional for his or her work.

The Office of Lawyer Regulation can, and does, contact ACD for the records related to 3rd party non-payment complaints.

Please review the Supreme Court Rules. If an attorney receives payment that includes funds for third parties, the attorney is required to “promptly deliver to the ...3rd party any funds or other property ...the 3rd party is entitled to receive.”

<https://www.wicourts.gov/sc/rules/chap20a.pdf>

SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts.

(b) Segregation and safekeeping of trust property. (1) Separate account. A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation. All funds of

clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts.

(e) Prompt notice and delivery of property. (1) Notice and delivery. Upon receiving funds or other property in which a client has an interest, or in which a lawyer has received notice that a 3rd party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the client or 3rd party in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the client or 3rd party any funds or other property that the client or 3rd party is entitled to



Year End 1099 Tax Forms

The year end is approaching, and 1099s will be mailed out in mid-January. If you have changed your address or want your 1099 mailed to an address different than your payments, we ask that you submit the DOA change of address form to us by 12/29/18.

Our mailing address is: State Public Defender—Assigned Counsel Division, P.O. Box 7923, Madison, WI 53707.

Let us know if your address has changed and we will send you the correct form needed by DOA to update your address in their system.

To update your address for travel, payment or 1099s :

Contact SPD-ACD at ACD@OPD.WI.GOV or 608-261-0632. We will provide you with the most up-to-date forms and instructions to make

sure that your payments and 1099 are sent to the correct address.



Why Was My Payment Less than I Expected?

If your payment is a little less than you expected it may have been reduced for performing an administrative task.

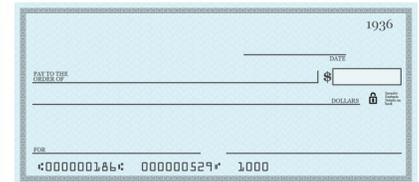
For example, opening a file, making copies, mailing, and faxing are all administrative duties, not professional legal services for which the SPD is able to reimburse.

Your payment may also be reduced for voicemail or text messages. Our policy

is to pay .01 hour for each text message and .05 for voicemail messages. If you are invoicing for multiple messages, please indicate that on the time slip with (X#) so the auditor knows how many messages you are billing for and can audit the invoice appropriately.

Due to the volume of invoices we receive, we typically do not send adjustment letters if the adjustment is less than

\$20. If you have a question, please feel free to contact us. We can take another look at the invoice.



From All of Us to All of You...

Thank you for all that you do in support of criminal defense for the indigent in Wisconsin.

Thank you for the days, nights and weekends spent preparing for court. Thank you for driving in rain, sleet, snow and hail to make that next court appear-

ance miles and miles and miles away. Thank you for making sure our clients are represented.

*Happy Thanksgiving,
Happy Hanukkah,
Merry Christmas,
Happy Kwanzaa,
Happy New Year, and
Happy Martin Luther King Day .*

*Go Badgers!
Go Bucks!
Go Packers!
Go Golden Eagles!
And last,
but not least,
way to go Brewers!
What a
great season!*

On Wisconsin!

Kathy Pakes, Assigned Counsel Division Director
Mark Rinehart, Program and Policy Supervisor

Kim Salas, Financial Specialist Senior/Auditor
Larry Judkins, Financial Specialist Senior/Auditor
Michelle Solem, Financial Specialist Senior/Auditor