

Wisconsin 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 State Public Defender. 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 Wisconsin State Public Defender to represent clients eligible for WSPD services. Except for those rules which reference issues peculiar to the private bar, e.g. certification, these standards reflect the same expectations the Wisconsin 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 State Public Defender 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 up-to-date 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.
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 state public defender regarding the status of appointed cases, performance issues, or billing issues in appointed cases.

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Competence and Diligence

1. An appointed attorney shall accept only those cases for which s/he can provide competent representation. Certification by the State Public Defender 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 stages of proceedings. An appointed attorney may arrange for another certified attorney to provide coverage of a routine appearance in the event a scheduling conflict that 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.
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 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

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of prosecution witnesses; and examine 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, an 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.
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 WSPD appellate division.
12. An appointed attorney shall notify the local SPD office as soon as the attorney moves to withdraw. If in writing, the attorney shall provide the local SPD 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, ES or parole, rescission of parole, and reconfinement 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 of Certiorari when appropriate.
 - i. represent the client in the related reconfinement hearing or sentencing after

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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.
2. An appointed attorney shall maintain civility and respect towards the courts, 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 state public defender 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 ACD director if the attorney has been arrested or charged with a crime. This notification shall occur within 24 hours of arrest or charging.