



# Wisconsin State Public Defender

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Copy of Testimony by State Public Defender Kelli Thompson  
Wisconsin Supreme Court  
Petition 17-06 – Rates for Court-Appointed Attorneys  
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Good morning Chief Justice Roggensack and esteemed Justices, I am Kelli Thompson, the State Public Defender.

I appreciate the opportunity to discuss issues related to the SPD reimbursement rate. I have submitted to the Court written material on which I'd like to elaborate this morning.

Although the petition primarily asks the Supreme Court to raise the rate of **court-appointed** counsel, it also addresses the statutorily set rate of reimbursement the SPD can pay assigned counsel.

\$40 is the nation's lowest statewide hourly rate. All justice partners are affected by the fact that the rate is so low. It has direct implications for defendants, victims, prosecutors, and judges. It also results in increased costs as cases take longer than necessary and those accused but presumed innocent are deprived of liberty.

The SPD's private bar partners are **essential** to providing indigent defense in Wisconsin. Wisconsin's system is recognized nationally and internationally as a model because of its hybrid system of using both staff attorneys and certified assigned counsel. The low rate of reimbursement is having a significant and, in some places, **dire** impact on the provision of representation in conflict of interest cases handled by our partners in the private bar.

The \$40 per hour rate is inadequate and should be increased. Our written material provides information demonstrating the inadequacy of the rate.

We have seen the impact of this in the number of attorneys certified in each county. The total number of attorneys certified to take cases has **dropped** more than 15% in the last 5 years AND almost 20% of certified attorneys did not accept an appointment in Fiscal Year 2017.

In fact, there are now more than a half-dozen counties with **no** certified attorneys.

Because there are not enough attorneys to take our cases at \$40, our appointment secretaries are calling dozens, sometimes as many as 70-80 lawyers to try to find one to take a case. Sometimes they find a lawyer who then travels from a completely different part of the state, which leads to increased costs and inefficiencies.

As an example from just last week, we received an email from the **last** certified attorney located and taking cases in Bayfield County

The attorney's message essentially read "Please know that I am not accepting new business from the SPD." He went on to explain that it was due to the rate.

This is an increasingly common response from attorneys who have historically taken our cases. Raising the rate would be a significant factor in stemming this tide.

We had an opportunity to meet with all judges in a county up north recently. The meeting also included the elected District Attorney. Everyone acknowledged there are many resource needs in the system, but that the one main problem affecting everyone was the low rate and its impact on the availability of attorneys

One judge expressed concern in a recent order that delays in appointing counsel due to the funding crisis could mature into constitutional violations, as noted by the Supreme Court's 2011 order.

In addition, the lack of available attorneys is a threat to the constitutional right to liberty and assistance of counsel. This issue also has an impact on victims' rights because of the delay in cases. These delays are having an increasing fiscal impact on counties and sheriffs because of longer pre-trial detention and the appointment of counsel at county expense AND it is having an impact on courts and prosecutors as cases continually get rescheduled pending appointment.

Increasing the hourly rate paid to our private bar partners has long been a priority of the SPD.

It has been the highest priority in every biennial budget request, and there has been a stand-alone bill in almost every session. There has been general agreement among legislators that they feel the rate is too low. The primary obstacle is funding and prioritization within the grand scheme of the budget.

In last 18-24 months, the problem has gotten more pronounced and is bringing in more voices advocating for a higher rate. We now have judges and district attorneys talking to legislators about the impact of the rate and we're getting significantly more legislative attention and attracting new support making this issue a higher priority.

Since the Court's order in 2011, this issue has become measurably worse. The information in written material provided to the court demonstrates this fact.

The SPD is committed to making this its top priority and will do so again in the 2019 budget.

Members of this court have been supportive in prior budgets of resources for prosecutors and public defenders, which we very much appreciate. During the 2019 budget process, I respectfully ask for the Court to support all reasonable efforts to raise the reimbursement rate because of the urgency of this issue.

Thank you for the opportunity to speak on this issue which has such a significant impact on the entirety of the criminal justice system and those accused of crimes in Wisconsin.

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*For additional material provided to the Court by SPD, please visit:  
<https://www.wicourts.gov/supreme/docs/1706commentsthompson.pdf>*