



CAP TEAM

WCA County Ambassador Program

COURT-APPOINTED ATTORNEY COMPENSATION RATE

Wisconsin's circuit court system is a partnership funded by a mix of state general purpose revenue (GPR), court fees and surcharges, and county taxes. In recent years, however, that partnership has frayed as counties have borne a growing share of the costs including the salaries and benefits of the clerks of circuit court and their employees, salaries and benefits for court commissioners, courtroom security personnel and equipment, office supplies, law libraries, and jury costs.

In addition to the responsibility of funding circuit court operations, counties are also responsible for providing—and paying for—legal counsel for many individuals. This includes guardians ad litem (GAL) and *Dean* appointments—individuals who do not qualify for a state public defender (SPD) but are unable to afford legal representation. Courts also appoint counsel at county expense when the SPD is excluded from providing representation in a case and the SPD cannot secure private bar representation for their client. Counties are required by Supreme Court rule to pay \$70 per hour for court-appointed attorneys; the SPD, by statute, pays a private bar rate of \$40 per hour. With the SPD rate statutorily set at \$40 per hour, many private bar attorneys are passing on SPD cases in hopes of receiving the case at the higher county rate.

In May 2018, the Wisconsin Supreme Court held a public hearing on Supreme Court Rule Petition 17-06. The petition requested the following changes be made to the court-appointed attorney compensation rate:

1. Increase the hourly rate for court-appointed attorneys to \$100 per hour and index hourly compensation rates annually for inflation.
2. Deem compensation less than \$100 per hour unreasonable.
3. Prohibit flat fee contracting.

Ultimately, the Supreme Court approved a portion of the petition and raised the court-appointed attorney rate to \$100 per hour beginning January 2020. This increase will be financially devastating for cash-strapped counties struggling to provide state-mandated services in an era of growing demands and reduced revenues. While the rate for court-appointed attorneys was raised for counties to \$100 per hour, the Supreme Court does not have the authority to statutorily change the rate for SPD appointments, which remains at \$40 per hour. This \$60 per hour discrepancy will further burden the counties with

providing representation in cases in which the state cannot obtain an attorney to represent a client who qualifies for the SPD. Furthermore, this increase will also be applied in cases requiring a GAL, and in cases where an individual does not qualify for SPD but cannot afford an attorney.

When the SPD cannot obtain private bar counsel to represent an indigent individual, judges will order the county to assume responsibility and provide counsel at the rate of \$70 per hour. According to the Sixth Amendment Center's *Justice Shortchanged Part II*, Wisconsin is the only state in the country with a state-funded, state-administered public defense system that requires counties to pay a higher rate for attorneys when the state cannot obtain counsel. Increasing the rate to \$100 per hour will likely result in more difficulty for the SPD in securing representation as attorneys may wait for a county-funded appointment at the higher compensation rate.

CURRENT STATUS: The Wisconsin Supreme Court has approved increasing the court-appointed attorney compensation rate to \$100 per hour, effective January 2020, directly impacting all of Wisconsin's 72 counties. Concurrently, the SPD is held harmless and their private bar compensation rate remains at \$40 per hour.

REQUESTED ACTION: Support the Criminal Justice Coalition's (comprised of the State Public Defender's Office, Wisconsin District Attorney's Association, Association of State Prosecutors, Wisconsin Department of Justice, and Director of State Court's Office) request for \$16.6 million annually to raise the SPD private bar rate to \$70 per hour effective July 1, 2019.

Further, support the Criminal Justice Coalition's request for \$10 million over the biennium to cover the increased cost to counties for court-appointed attorneys due to the change in Supreme Court rule. The rate will increase from \$70 per hour to \$100 per hour beginning January 2020.

TALKING POINTS:

- The Wisconsin Supreme Court has approved an increase in the court-appointed attorney compensation rate from \$70 per hour to \$100 per hour for all 72 counties beginning January 2020.
- The SPD's rate was adjusted down in 1995 to \$40 per hour, making it the lowest private attorney rate in the nation.
- The increase to \$100 per hour for counties, while holding the SPD's Office harmless, will only increase the financial burden to counties as more private bar attorneys may refuse a case until it becomes the county's responsibility at a higher compensation rate.
- Counties will also have to pay the new inflated rate of \$100 per hour for *Dean* appointments and guardian ad litem appointments.

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