

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 Guardian ad Litem (GAL), DEAN appointments—individuals who do not qualify for a state public defender (SPD) but are unable to afford legal representation—and when the SPD cannot find representation for their client. Counties are required by Supreme Court rule to pay \$70 per hour for court appointed attorneys, even in cases where an individual qualifies for state representation. With the SPD rate statutorily set at \$40 per hour, attorneys are passing on SPD cases in hopes of accepting 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 suggested 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. Any compensation less than \$100 per hour would be deemed 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 court does not have the authority to statutorily change the rate for the SPD office which remains at \$40 per hour. This \$60 discrepancy will further burden the counties with providing representation where the state cannot acquire an attorney to represent a client who qualifies for the SPD.

When an SPD attorney cannot be obtained 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: 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-required appointment at the higher compensation rate. 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.

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 local attorney compensation rate remains at \$40 per hour.

REQUESTED ACTION: Support the Criminal Justice Coalition, 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 rate to \$70 per hour effective July 1, 2019.

Further, support the Criminal Justice Coalition request for \$10 million over the biennium for the increased cost to counties for court appointed attorneys. The rate will increase to \$100 per hour beginning January 2020.

TALKING POINTS:

- The Wisconsin Supreme Court has approved an increase in the court appointed attorney compensation rate increasing the cost 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 SPD 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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