

**Waukesha County Circuit Courts
Memorandum of Understanding
Appointment and Compensation of Court Appointed Counsel
pursuant to Supreme Court Rule 81.02 as modified June 27, 2018**

Effective Date: January 1, 2020

In June of 2018, the Wisconsin Supreme Court reviewed and ordered amendments to the operational direction provided to Circuit Courts under Supreme Court Rules. The Order, 2018 WI 83, specifically addressed appointment and compensation rates established for Court appointed attorneys.

This Memorandum of Understanding (“MOU”) is intended to establish appointment and compensation parameters for services performed by attorneys who accept appointments from the Circuit Court (hereinafter “Attorney” or “Counsel” or “Contractor” or “Contracting Attorney”), the service obligations of Counsel to the case participants served in various case types, and the administrative responsibilities of Counsel, the Clerk of Circuit Court, and the Circuit Court.

This Memorandum is intended to be a contract and agreement guiding legal services providers according to the direction found in Wisconsin Supreme Court Rule 81.02(1m).

- 1) **Term:** The term of this MOU and Agreement shall be effective beginning January 1, 2020, and shall continue until subsequently modified. Appointments made prior to this MOU shall operate in conformity with the terms in effect prior to January 1, 2020. Any future changes to this MOU will be communicated to each Contracting Attorney in writing.
- 2) **Termination and Expiration:** Participation in this MOU Agreement is voluntary, and may be terminated by either party at any time upon 60 days written notice to the other party. If service is terminated or the Agreement expires, any Contracting Attorney shall continue to provide full services on any cases where there is an active appointment. Similarly, remuneration will be paid for services on any active case assignments that are resolved after contract termination.

On case specific appointments, an attorney appointed pursuant to this MOU shall serve at the pleasure of the appointing Court, and the appointment may be terminated at any time, for any reason, at the discretion of the Circuit Court.

In the event of a suspension or revocation of a participating attorney’s license, responsibilities under this Agreement will terminate immediately and decisions on activity or action in any current open cases will be directed by the responsible court official currently assigned to the case.

Counsel shall not be required to accept appointments in instances where doing so would result in a conflict of interest.

- 3) **Types of Appointments:** Legal Service appointments may be made at the discretion of the Court for any statutory purpose to serve as a Guardian *ad Litem* or Advocate Counsel. Additionally, Legal Service appointments may be made at the discretion of the Court to provide representation for persons who do not qualify for State Public Defender services in Felony, Misdemeanor, Criminal Traffic, and various Juvenile or Probate case types. Specific appointments are managed and communicated between the Court and Counsel in the manner established in each branch.

- 4) Create and Maintain a List of Attorneys Eligible for Appointment: It is directed that a list of approved attorneys who are eligible to accept Circuit Court appointments be maintained by the Clerk of Circuit Court. This list will include all attorneys who have completed and submitted an informational form that provides their full contact information, appointment type availability, certification of appropriate CLE and GAL training, State Public Defender private appointment certification, and acknowledgement / acceptance of service terms. The list will be updated as frequently as necessary to add new attorneys or remove existing attorneys as circumstances require. Attorneys may contact an individual court or divisional office to obtain the information necessary to be added or removed from appointment consideration.

The List of Attorneys Eligible for Appointment will be shared with each Circuit Court Judge and will be used at the discretion of each Court for its appointments. It is intended that this list will be used for all appointments, except in extraordinary circumstances as determined by the Court.

- 5) Legal Services Duties and Responsibilities: Counsel agrees to provide all legal services necessary to effectively serve their client, advise and assist the Court, and/or provide effective legal defense. It is understood that individual case services and legal assistance provided is dependent upon each case. Counsel will have the discretion and exclusive control over the manner and means by which they serve the legal interests of their clients in each case, as is the case with legal service appointments made outside of this Agreement. For purposes of this Agreement, the term “services” shall mean those legal services that, from an objective standpoint, are reasonably required for an experienced, ethical and competent attorney to provide an appropriate and effective legal defense or representation in every appointed case.

Attorneys shall advise their clients of the potential for, and necessity of, the client’s legal obligations for reimbursement under the order appointing counsel.

Consideration will be given by the Court to appoint counsel with foreign language fluency to represent clients with limited English proficiency, if possible.

No eligible client shall be denied effective service of counsel because of age, race, religion, color, ethnicity, sex, sexual orientation, physical condition, mental or cognitive capacity, or other disability.

- 6) Professional Status, Insurance, Continuing Legal Education, and Eligibility: Attorneys appointed under this Agreement must be licensed to practice law in the State of Wisconsin and maintain their license in good standing during the term of this Agreement. Counsel shall keep in force liability insurance to insure themselves in any claim of malpractice, injury or damage to persons or property that may arise in the performance of their obligations under this agreement. Counsel shall be familiar with, and follow Supreme Court Rules directing licensure, practice, liability, and any required education requirements as identified by state statute or Supreme Court Rule.
- 7) Compensation: Counsel appointed under the contractual conditions of this MOU will be paid and reimbursed for expenses as follows:
- a) Attorneys accepting appointment to serve in the capacity of a Guardian *ad Litem* in any case type will be appointed at the SCR base rate of \$100 per hour, or higher if the Court directs pursuant to SCR 81.02. Exceptions to this rate of compensation are noted below.
 - b) Compensation for appointments at rates different than \$100 per hour are established per SCR 81.02 (1m) as noted below.
 - c) Attorneys accepting appointment to serve in the capacity of Advocate Counsel in any case type will be paid at a base rate of \$70 per hour which is based on the rate of compensation

paid to private bar attorneys who accept service appointments through the State Public Defender Office. (The SPD rate was increased in 2019 by the state through the biennial budget and can be found in 2019 WI Act 9).

- d) Attorneys accepting appointment to serve in the capacity of non-indigent “Dean” counsel, in all criminal misdemeanor and criminal traffic cases will be paid a flat fee of \$400 per case. Flat fee appointments will exclude all OWI 2nd and higher charged cases. Circumstances may result in additional cases being filed for the same defendant, and in these instances a supplemental fee of \$100 may be added for services required on each additional case that is filed and managed simultaneously with the original appointment.
- e) Attorneys accepting appointment to serve in non-indigent “Dean” appointments for OWI 2nd and higher cases will be paid at a base rate of \$70 per hour.
- f) Attorneys accepting appointment to serve in non-indigent “Dean” appointments for criminal felony cases will be paid at a base rate of \$70 per hour.
- g) Appointments made in OWI 2nd cases, and in criminal felony cases, and have additional charges added as part of the action are not considered as separate for billing purposes. Similarly, if a represented defendant has a separate case filed following the original appointment and representation is extended to the new case this is considered all one service for billing purposes. Unusual service circumstances should be brought to the court’s attention for discussion.
- h) Attorneys accepting appointment as a Guardian *ad Litem* for the purpose of reviewing and communicating the results of DNA testing in paternity and marital presumption review matters will be paid a flat fee of \$300 for their service in this very limited activity.
- i) Attorneys accepting appointment for uncontested Protective Placement annual reviews (“Watt’s Reviews”) will be paid at a flat fee of \$300 for an annual visit and report to the court on the status of the ward. (Effort will be made to expand current efforts to assign multiple cases with wards in close proximity to each other, to the same appointed GAL to provide a higher level of efficiency. Additional compensation may be available for a ward who resides more than 45 miles from the appointed GAL).
- j) For contested Protective Placement reviews, an attorney serving as a GAL will identify and bill for the additional time over and above the annual review rate in (h) above, at \$100 per hour.
- k) In exceptional circumstances a case may require an additional commitment of time to ensure that effective representation is provided. Any additional service time or, as noted below, supplemental services, must be communicated to the Court in advance to obtain approval. Failure to do so may result in the additional fees or expenses being disallowed.
- l) Counsel may submit for reimbursement of current services in the event a bench warrant is issued by the Court, and if the defendant is not re-arrested and case services continue within 60 days of the warrant being issued. If case activity re-opens on a case following issuance of a bench warrant, continuing service will be at the discretion of the Court.

8) Reimbursed Expenses: Contracted counsel under this MOU shall be reimbursed for expenses as follows:

- a) Investigative or expert services, **with advance approval by the Court and the defendant**, and **with the agreement of the defendant to repay the cost of same** in addition to his/her repayment of the attorney fees as ordered in this agreement.
- b) Discovery fees charged by the District Attorney’s Office for materials requested by, and provided to defense counsel. Receipts must accompany invoice.

- c) Costs for external photocopying or obtaining supplemental electronic media, if total for any one (1) case exceeds ten dollars (\$10.00). Receipts must accompany invoice.
 - d) Transcript preparation fees **with prior approval of the Court**. Receipts must accompany invoice.
 - e) Other extraordinary costs may be incurred and reimbursed only **with prior approval of the Court, and with the agreement of the client to promptly pay the same**. Receipts must accompany invoice.
- 9) Unreimbursed Expenses: The appointed attorney or firm under this Agreement will be required to provide his or her own office; business supplies, mail, postage or delivery costs, office and support services, phone services and internet, and will not receive any supplies, office or support services from Waukesha County. Mileage, fuel surcharges, training, travel for training and legal research materials are not provided or reimbursed under this agreement. Cascading fees for services of law clerks, legal assistants, administrative support, or other staff and overhead or other expenses are not reimbursed under this Agreement.
- 10) Statements /Invoices and Payment: There are differences in business arrangements between Criminal, Family, Civil, Juvenile, and Probate legal service appointments. Specific invoicing arrangements are established by each Circuit Court Services business division and will be structured to create efficiencies for both appointed counsel and the court. Absent direction otherwise, a single Invoice for Services shall be submitted within forty-five (45) days of notification by the court that legal services are complete and the action concluded.

Invoices for Flat Fee Appointments shall include basic remittance detail recording the case appointment, beginning and ending dates of billed service, and any supplemental information identifying agreed upon case related expenses. An Affidavit of Services shall accompany the invoice.

Invoices for Hourly Appointments shall include specific remittance detail regarding the case appointment, the beginning and ending dates of billed service with specific service entries by date on the case, and any additional expenses and/or supplemental Court approved case related expenses. An Affidavit of Services shall accompany the invoice.

The Court or the Clerk of Circuit Court, Juvenile Clerk of Court, or the Register in Probate may require counsel to submit additional documentation concerning requested fees and expenses if necessary for service verification and/or reimbursement from the represented case party.

Upon submission of a correct final invoice and any required supplemental fee and cost documentation, payment for service will be made within 30 days by the Clerk of Circuit Court / Waukesha County.

Counsel is advised that the Clerk of Circuit Court office may, at its discretion, deny payment on invoices that are submitted more than 9 months after completion of service.

- 11) Taxes: An individual attorney or firm appointed under this Agreement will be considered an independent contractor and will not be considered an employee for any purpose. Contracting attorney's understand that they are responsible for all applicable taxes. Neither federal, nor state, nor local income tax nor payroll tax of any kind shall be withheld or paid by Waukesha County on behalf of the provider. An Affidavit of Services shall accompany each invoice and include the provider's federal employer identification or social security number to allow for proper reporting of payments to state and federal tax authorities.

- 12) Benefits: Contractors understand that there are no health, dental, retirement, or other benefits, offered by the County with respect to the services provided pursuant to this agreement.
- 13) Dispute Resolution: The parties agree that all disputes arising under this MOU and agreement shall be resolved by bringing the issue to the attention of the appointing Judge or the Chief Judge and developing a satisfactory solution suitable to the issue at hand.
- 14) Notices: Any Notices to be given hereunder by either party to the other may be affected either by personal delivery in writing, or by registered or certified mail, postage prepaid, with return receipt requested. Mailed notices shall be addressed as follows:

If to the Court: The Honorable Jennifer R. Dorow
 Waukesha County Circuit Courts
 515 W. Moreland Blvd.
 PO Box 1627
 Waukesha, Wisconsin 53187-1627

If to "Contractor": _____

15) General Provisions:

- a) Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- b) Indemnification and Defense of Suits: The Contractor agrees to indemnify, hold harmless, and defend the County, its officers, agents, and employees from any and all liability including claims, demands, damages, actions or causes of action; together with any and all losses, costs, or expense, including attorney fees, where such liability is founded upon or grows out of the acts, errors, or omissions of the Contractor, its employees, agents or subcontractors, employees, in the performance of this contract.
- c) Invalid Provisions. If any provision of this MOU is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and this MOU shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom.
- d) Entire Agreement. This MOU sets forth the entire understanding of the parties and supersedes all prior arrangements or/and understandings, whether written or oral, with respect to specific case appointments made under it. No terms, conditions, warranties, other than those contained herein, and no amendments or modifications hereto shall be binding unless made in writing and signed by the Chief Judge, the Waukesha County Clerk of Circuit Court, and the Contractor.
- e) Insurance Requirements Contractor shall agree that he/she will, at all times during the term of the MOU, keep in force and effect insurance policies in accordance with the provisions below,

issued by a company or companies authorized to do business in the State of Wisconsin and satisfactory to the County. Such insurance shall be primary. Waukesha County shall be named as additional insured with respects to General Liability. With the acceptance of the written MOU, counsel shall furnish the County with a Certificate of Insurance and upon request, certified copies of the required insurance policies. The Certificate shall reference the contract and provide for thirty (30) days advance notice of cancellation or non-renewal during the term of the contract.

Worker's Compensation and Employer's Liability Insurance: Statutory worker's compensation benefits and employers' liability insurance. Contractor shall require subcontractors not protected under its insurance to take out and maintain such insurance.

Commercial General Liability Insurance (including Professional Liability/Errors and Omissions Coverage) Policy shall provide coverage for premises and operations, products and completed operations, personal injury and blanket contractual coverage. Errors and omissions shall not be excluded or a separate policy covering such exposure shall be maintained. Failure to submit an insurance certificate, as required, can void the contract at the Court's discretion.

f) Execution. This MOU may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall be considered one and the same instrument. A facsimile signature will have the same legally binding effect as an original signature.

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Pursuant to Supreme Court Rule 81.02 as modified June 27, 2018**

Court Approval:

By: _____
Honorable Jennifer R. Dorow, Chief Judge

Date: _____

Waukesha County Clerk of Circuit Court:

By: _____
Gina M. Colletti,
Clerk of Circuit Court

Date: _____

Contractor / Attorney:

By: _____

Date: _____

Business Address

Business Telephone Number