

CR 91-36

STATE OF WISCONSIN
OFFICE OF THE STATE PUBLIC DEFENDER

I, Daniel M. Berkos, Chair of the State Public Defender board and custodian of the official records, certify that the annexed rules relating to adversary representation by state public defender attorneys were duly approved and adopted by this board on February 7, 1991.

I certify that this copy has been compared by me with the original on file in this Office and that the same is a true copy thereof, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 11th day of December, 1991.

Daniel M. Berkos

DANIEL M. BERKOS
Chair, State Public Defender Board

REVISOR OF STATUTES

4:10 pm
DEC 13 1991

2-1-92

PROPOSED ORDER OF THE STATE PUBLIC DEFENDER BOARD
CREATING A RULE

An order to create chapter SPD 5, relating to adversary representation by state public defender attorneys.

Analysis:

Current Wisconsin case law (Lehman v. Edwards, 137 Wis. 2d 65, 78 (1987)) permits courts to appoint stand-by counsel in cases where a defendant in a criminal action has elected to proceed pro se, if the court determines that the needs of the trial court would be best served by doing so. This proposed rule codifies existing agency policy in that: 1) it specifies that the primary goal of SPD staff attorneys and appointed private bar attorneys is to provide adversary legal services to indigent defendants who are eligible for services; and 2) prohibits SPD staff attorneys and appointed private bar attorneys from acting as stand-by counsel.

Statutory authority: s. 977.02, Stats.

Statutes interpreted: ss. 967.06, 977.02 (5) and (6) and 977.05 (4) (h), Stats.

SECTION 1. Chapter SPD 5 is created to read:

CHAPTER 5
ADVERSARY REPRESENTATION

SPD 5.01 Definitions. In this chapter:

- (1) "SPD attorney" means a SPD staff attorney who is assigned to a case or any private bar attorney who is appointed to a case by the SPD.
- (2) "Stand-by counsel" means an attorney who has been appointed by a judge to assist him or her in a criminal action because the defendant in the action has elected to proceed pro se.

SPD 5.02 Adversary representation. (1) Except as provided in sub. (2), all SPD attorneys shall act as adversary counsel in their representation of indigent clients.

- (2) Nothing in this section shall prohibit the state public defender or his or her designee from authorizing a SPD attorney to file an amicus brief.

SPD 5.03 Prohibition against acting as stand-by counsel. (1) No SPD attorney may act as stand-by counsel in any case.

(2) This prohibition applies whether or not the SPD attorney was originally providing adversary representation in the case.

This rule shall take effect on the first day of the month commencing after the date of publication, pursuant to s. 227.22 (2) (intro.), Stats.