



Wisconsin State Public Defender

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Representative Samantha Kerkman
315 North, State Capitol
Madison, WI 53703

Dear Chair Kerkman,

At the September 11 meeting of the Special Committee on the Permanency of Young Children in the Child Welfare System, three assistant corporation counsel attorneys provided testimony on the process of handling termination of parental rights (TPR) cases in Wisconsin. Points were made by the presenters regarding the involvement of the State Public Defender's (SPD) office that warrant clarification.

A point was made about the delay in the appointment of respondent's counsel in TPR cases.

After the TPR case is filed, it is the responsibility of the respondent to seek counsel. The SPD is not able to appoint an attorney automatically: the respondent must proactively contact the local office to provide financial eligibility information and, if qualified, have an attorney appointed.

The practice in Dane County of notifying our Madison office of filed TPR cases is helpful, but has limited effectiveness. We are able to check if a conflict of interest might exist for a staff attorney, but are still not able to determine financial eligibility before contact with the respondent.

The use of a staff attorney or assigned counsel was also raised. Particularly in the case of Madison, the use of assigned counsel decreased starting approximately two to three years ago as a result of shifting juvenile caseloads and the need to provide the best representation at the highest value to the taxpayer. Any corresponding increase in motion practice and litigation is a testament to the commitment by SPD staff attorneys to provide a zealous defense in every case.

These litigation events are not frivolous actions intended to be dilatory, rather they are aspects of effective advocacy in cases in which the clients face permanent loss of the ability to have a parent-child relationship.

Assigned counsel who accept TPR cases from the SPD are required to meet certain training qualifications to accept those cases. Aside from the difficulty of handling TPR cases, the current low rate of reimbursement for SPD cases, \$40 an hour, does not often cover the overhead cost for a private attorney of providing representation. Although there are some highly-qualified private attorneys who accept TPR appointments, SPD staff attorneys are the most consistent in providing a high skill level in these cases.

While it may have been unintentional, the impression left by the panel was that the manner in which the SPD determines financial eligibility and appoints counsel creates a significant delay in working to reach resolution. To clarify, the points made by the panel are either beyond the

control of the Public Defender's office or are the natural result of providing effective representation.

Thank you for your continued diligent work on these important questions.

Sincerely,

Adam Plotkin
Legislative Liaison

Cc: Attorney Margit Kelley
Attorney Melissa Schmidt