



Wisconsin State Public Defender

17 S. Fairchild St. - 5th Floor
PO Box 7923 Madison, WI 53707-7923
Office Number: 608-266-0087 / Fax Number: 608-267-0584
www.wisspd.org

Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State
Public Defender

August 11, 2016

Representative Cody Horlacher
Chair, Study Committee on Access to Civil Legal Services
17 North, State Capitol
Madison, WI 53708

Dear Chairman Horlacher,

Following the initial meeting of the Legislative Council Study Committee on Access to Civil Legal Services, the State Public Defender (SPD) wanted to provide some information as well as responses to some of the questions and issues that were raised at the meeting.

In general, the reason the SPD is interested in this topic is the frequency with which SPD clients' criminal charges are exacerbated or even caused by issues that involve the civil legal system.

Often, the clients are ill-equipped to navigate these issues on their own and unable to retain counsel to provide assistance. In our experience, if the civil legal issues were addressed, the underlying criminal case may be averted or the consequences mitigated.

One recurring theme from the committee meeting seemed to be one of unmet need, and more specifically lack of institutional capacity to provide expanded civil legal services. A concept gaining momentum in the public defense world is known as "holistic representation." This concept involves having public sector attorneys provide individual client representation across the entire spectrum of the justice system. From civil to criminal proceedings to family court, the client receives complete representation for a broad range of potential legal issues. I am including a brief summary of the services provided by the Bronx Defenders, which is considered a model of holistic representation.

Although an expansion of the SPD mission to this model would be extensive and likely outside the scope of the committee's mission, there are concepts the committee could explore. One possible idea could be to implement a pilot program limited to one or multiple counties.

Alternatively, it could also be limited to just certain case types.

The topic of limited scope representation also came up at the first committee meeting. SPD was involved in the creation of the current limited scope representation rules and is aware of a forthcoming Supreme Court petition to address some of the issues identified with the first iteration of the rule. In concept, limited scope representation allows an attorney to facilitate access to the court without establishing a formal attorney-client relationship. In some cases, simply getting someone started in the process and pointing him or her in the right direction can go a long way toward achieving resolution.

Another form of limited scope representation involves an attorney participating in, for example, a single hearing in a court case, rather than agreeing to represent the client throughout all the court proceedings in that case.

Limited scope representation can also serve as an incentive to encourage additional pro bono representation in the civil legal system. While SPD attorneys represent indigent defendants in criminal and certain civil cases during the day, earlier this year we created and adopted a policy to encourage pro bono representation. I have attached a copy of our policy statement and the policy that was adopted. Another goal in developing this policy was, in conjunction with the State Bar of Wisconsin's Pro Bono Section, to create a model policy to encourage public sector attorneys to participate in pro bono activities.

Alternative dispute resolution methods was also a topic raised at the meeting. First, the concept could be implemented by utilizing a professional other than a licensed attorney to assist in providing access to the court. While this may be a concept worth more in-depth review, our initial research on the subject found the use of Limited Practice Officers and Licensed Legal Technicians allowed for by the State of Washington Supreme Court. One point to consider is cost. A Licensed Legal Technician charges \$110 an hour. Just by way of comparison, in Wisconsin, criminal cases appointed by the Public Defender's office to private attorneys are reimbursed at \$40 per hour. Attorneys appointed at county expense are generally reimbursed \$60-70 an hour.

Second, the committee discussed the use of mediation alternatives. Mediation alternatives can be useful, particularly in family court cases. There are several questions to consider when looking at possibly expanding mediation options in Wisconsin: who will run or supervise the program, for what types of cases will it be available, what is the cost to access mediation services, and are decisions of the mediator appealable to the circuit court. It may be useful for the committee to hear more on the subject. One possible presenter could be from the Wisconsin Association of Mediators - wamediators.org.

The Chicago Bar Foundation partnered with the Circuit Court of Cook County to establish mediation programs geared towards foreclosure assistance. From that partnership came three programs, each of which has demonstrated success: the Chicago Legal Clinic, the Center for Conflict Resolution, and Chicago Volunteer Legal Services.

Finally, Justice Prosser raised the issue of availability of attorneys in rural parts of the state. In our experience, Justice Prosser's comment is accurate and impacts the efficiency of court operation and the speedy disposition of criminal cases. In the civil setting, before even considering mechanisms to fund or create a more stable civil legal aid system, the personnel must be available to provide representation. There are many concepts the committee might consider to provide incentive for attorneys to locate their practice in areas of need in Wisconsin.

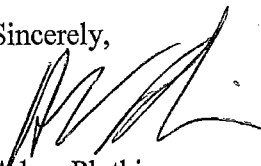
One option could be to model a tuition loan assistance program after similar programs currently available to health professionals including the Wisconsin Health Professionals Loan Assistance Program or the Primary Care and Physician Shortage Grant program. This type of program could be developed to include incentives for representation of low-income clients in civil or

August 10, 2016

criminal cases (for example, a base level of loan assistance tied to location of practice in a rural area, with supplement for documented work for indigent clients.)

Thank you for the opportunity to provide information for the committee's consideration. If we can be of assistance in your work, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Plotkin', with a stylized flourish at the end.

Adam Plotkin
Legislative Liaison
Office of the State Public Defender

WHO WE ARE OUR WORK OUR NEWS HOLISTIC DEFENSE GET INVOLVED CLIENTS & COMMUNITY

A new model of public defense.

HOLISTIC DEFENSE, DEFINED THE CENTER FOR HOLISTIC DEFENSE TRAINING & TECHNICAL ASSISTANCE

Holistic Defense, Defined

Holistic Defense is an innovative model of public defense, pioneered by The Bronx Defenders, that achieves better outcomes for clients, their families, and their communities. Holistic Defense combines aggressive legal advocacy with a broader recognition that for most poor people arrested and charged with a crime, the criminal case is not the only issue with which they struggle.

To be truly effective advocates for clients, attorneys must expand the scope of their representation to address both the collateral consequences and enmeshed penalties of court involvement, as well as the underlying issues that play a part in driving clients into the justice systems in the first place. Attorneys who have a more comprehensive understanding of their clients, their families, and their circumstances are able to provide holistic representation that achieves better case dispositions and better life outcomes.

Moreover, clients who receive support from a holistic and interdisciplinary team of legal and social support advocates are better equipped with the knowledge and resources to address the collateral consequences and enmeshed penalties associated with their court involvement. Working with their holistic team, clients are able to make truly informed decisions about how to proceed with their cases and are empowered with the resources and support to address the underlying issues and challenges in their lives. As a result, these clients fare better either while plea-bargaining or going to trial. Ultimately, getting to the root of these problems and by stabilizing lives, the practice of Holistic Defense reduces the likelihood of future criminal justice contact.

The following core principles outline the foundation of Holistic Defense:

Seamless access to services that meet legal and social support needs

Holistic Defense begins with a commitment to addressing clients' most pressing legal and social support needs. Because the universe of these needs will vary from community to community, a holistic defender office must begin by identifying the full range of client needs.

Dynamic, interdisciplinary communication

What is fundamental to the practice of Holistic Defense is not so much that there is an interdisciplinary team, but that the team's culture is one of open, frequent, and meaningful communication.

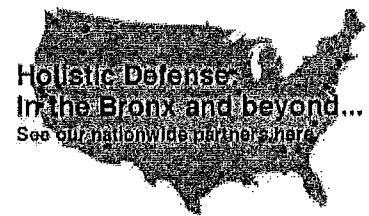
Advocates with an interdisciplinary skill set

But beyond the zealous advocacy of the committed public defender, a holistic defender must be willing to develop and enhance a specific set of skills that is both client-centered and interdisciplinary.

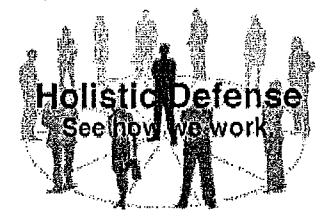
A robust understanding of, and connection to, the community served

This practice derives from the realization that the advocate who is better able to relate to her client because she has spent time in his neighborhood and with members of his community will be more likely to provide authentic and effective representation.

[Read More About the Four Pillars](#)



APPLY FOR
Holistic Defense Training
& Technical Assistance Grants



News On Holistic Defense

Yes Magazine: When You Can't Afford the Cost of Clearing Your Record

Adrienne broke the law: Caught speeding on her way home from work in Memphis, Te...
[Read more](#)

Independent Record: Flathead Reservation program helps former inmates reintegrate

A new program on the Flathead Reservation is helping people who are released fro...
[Read more](#)



Announcing Request for Proposals for 2015 Holistic Defense for Public Defender Offices Technical Assistance Project

State Public Defender Pro Bono Policy Statement

The State Public Defender supports the State Bar of Wisconsin Strategic Plan to facilitate public access to the legal system and to assist underserved members of the public in need of legal services.

Government lawyers can and should contribute to this goal. Government agencies should have policies that reduce barriers for government lawyers to provide pro bono legal services to people who cannot afford legal representation.

The SPD is legally responsible for providing legal representation to indigent people in statutorily defined cases. The SPD is in a unique position to understand the unmet legal needs of the poorest members of our communities because we represent indigent persons full-time in criminal, mental health commitment, juvenile, and termination of parental rights matters.

This policy is intended to facilitate and support the work of SPD staff attorneys who wish to deliver pro bono services in other areas beyond assigned duties. The SPD supports programs and initiatives that increase access to legal services by indigent people. The SPD encourages staff attorneys to support activities that further the goal of facilitating public access to the legal system as envisioned in the State Bar of Wisconsin Strategic Plan.

SPD Pro Bono Policy

Recognizing attorneys' professional responsibility regarding pro bono services under SCR 20:6.1, this policy provides the framework in which pro bono work may be done by an SPD staff attorney. The SPD also has responsibilities as a government agency to ensure that agency staff time and resources are focused on the agency's statutorily-authorized activities.¹

Supreme Court Rule (SCR) on Pro Bono

Under Wisconsin's Rules of Professional Conduct, every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono legal services per year. (SCR 20:6.1). The majority of the 50 hours should be performed "without fee or expectation of fee." (SCR 20:6.1(a)).

"Pro bono" work may include the delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; delivery of legal services at a substantially reduced fee to persons of limited means; or participation in activities for improving the law, the legal system or the legal profession. (SCR 20:6.1(b)).

Separation of Pro Bono and Work Activities

SPD attorneys are encouraged to seek pro bono opportunities that can be accomplished outside their scheduled working hours. Direct pro bono representation in a matter outside of the SPD's statutory authority requires that the attorney provide the service on his or her own time and that the attorney make clear that the representation is separate from his or her SPD employment.

Supervisory Review and Approval Procedure for Pro Bono Legal Representation

Attorneys who provide pro bono legal representation are responsible for ensuring that any representation does not create an actual or apparent conflict of interest with a current SPD client. Attorneys must also ensure that they comply with all applicable rules and statutes governing attorney conduct. Attorneys should consult with their supervisors about any potential conflicts.

¹ Some activities that directly support the SPD mission and help to improve the justice system, such as serving as the SPD representative on a treatment-court team, may technically fall within the broad SCR definition of pro bono. (See SCR 20:6.1(b)). Staff may participate in these activities on behalf of the agency and while in work status. This policy does not regulate or redefine these work activities. This policy addresses activities that are not within the scope of SPD work activities, but may fall within the SCR definition of pro bono.

Responsibility for Pro Bono Activities

The SPD is not responsible or liable for the acts or omissions of an attorney engaged in any pro bono activity that is outside the scope of SPD work activities. Each staff member is acting outside the scope of his or her employment when he or she participates, supports, or joins in any pro bono activity.

February 5, 2016