

STATE OF WISCONSIN,

Plaintiff,

Case No. _____

v.

_____,
Defendant.

PETITION FOR APPOINTMENT OF COUNSEL AT COUNTY EXPENSE: DEFENDANT QUALIFIES FOR STATE PUBLIC DEFENDER APPOINTMENT BUT NO LAWYER HAS BEEN FOUND TO APPOINT

I am the defendant in this case and I petition this Court to appoint counsel for me at county expense pursuant to SCR 81.02 and S. Ct. Order 17-06, *In the Matter of the Petition to Amend Supreme Court Rule 81.02*, 2018 WI 83, p.15 (issued June 27, 2018), *Carpenter v. County of Dane*, 9 Wis. 274, 278 (1859), the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, § 7 of the Wisconsin Constitution.

I also request that this Court hold a hearing on this matter, that I be produced for the hearing, and that the Court order that a representative of the Office of the State Public Defender be at the hearing. At this hearing, I request that this Court find that the SPD is unable to find an attorney to represent me. In making this determination, I request that the Court consider:

- the length of time I have been awaiting appointment of an attorney;
- the length of the sentence I could receive, especially if the time I have waited is approaching the maximum likely sentence;
- the number of adjournments required and the number of and types of deadlines missed during the time I have been awaiting appointment of an attorney;
- the likelihood that evidence in this case is not being preserved while I wait, including the likelihood that witnesses in this case may become hard to find or that video or other evidence, whether in the hands of the state or third parties, will be destroyed if not requested promptly;
- the existence of represented co-defendants, which may put me at a disadvantage in negotiating favorable plea agreements;
- any other ill effects on me and my family from the wait, including potential loss of a job or a home;
- the efforts that the SPD has made to find me an attorney, including the number of attorneys contacted, the time spent searching for an attorney, the office location of the attorneys contacted;
- the recent history of the ability of the SPD to appoint counsel in similar cases in this county; and
- any other relevant considerations

My right to counsel in this proceeding is fundamental and both the state and federal constitutions provide for it. U.S. const. amend. vi, xiv; Wis. const. art. I, §7. That right to counsel is also the right

to the effective assistance of counsel. U.S. const. amend. vi, xiv; Wis. const. art. I, §7. Because I am indigent, these constitutional rights require that counsel be appointed for me. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Carpenter*, 9 Wis. 274. The failure to have counsel appointed promptly results in adjournments of critical stages of my case, such as preliminary examinations, failures to properly preserve evidence, and, in some instances, incarceration far longer than would have otherwise occurred.

Although courts in this state have relied upon the Office of the State Public Defender in the past to appoint counsel, the SPD has been increasingly unable to find attorneys because many are no longer willing to take public defender appointments at the SPD rate of pay. See *In the Matter of the Petition to Amend*, 2018 WI 83, p. 6-9. The Office of the State Public Defender has been unable to appoint counsel in this case.

“Considerable and long-standing precedent confirms the court’s authority to appoint counsel, *id.*, p12, and ‘[t]he counties’ obligation to pay the costs of court appointed counsel has...been settled for well over a century, *id.*, p13.

Because the SPD is unable to appoint counsel for me, this Court is obligated to appoint counsel for me and direct the county to pay the lawyer. “If lawyers are unavailable or unwilling to represent indigent clients at the SPD rate of \$40/ hour, as is increasingly the case, then judges must appoint a lawyer under SCR 81.02, at county expense.” *Id.*, p15.

IN SUPPORT OF THIS PETITION I STATE THE FOLLOWING:

1. I have applied for the appointment of an attorney, through the SPD, to represent me in this case. My application to the SPD was made on _____.
2. I am indigent and cannot afford to hire an attorney for my case. The SPD has found me eligible for the appointment of an attorney. As part of the process, the SPD has verified the information necessary to determine indigency, determined if I have disposed of assets in order to qualify for the appointment of counsel, and had me sign a statement declaring that the information I provided to the SPD is “true” or face potential prosecution. Wis. Stats. §§ 977.06 and 977.07.
3. (Check one)
 - I am in custody because of this case. I have been in custody since _____.
 - I am not in custody because of this case.
4. The SPD has not appointed a lawyer to represent me and it is likely that the SPD will not be able to find an attorney to represent me. In any event, I believe that the SPD will not be able to appoint an attorney quickly enough that I will receive the effective assistance of counsel, see U.S. const. amend. vi, xiv; Wis. const. art. I, §7.

Dated this _____ day of _____, 20____.
(day) (month)

Signed:

Defendant (*By signing I acknowledge the Court may order me to repay all or part of the costs and fees associated with my defense*)

Pursuant to §802.05 (2m) Stats. this document was prepared with the assistance of Attorneys Henry R. Schultz (WI Bar #1003451) & John A. Birdsall (WI Bar # 1017786), co-counsel in SCR Rules Petition 17-06, & Ellen Henak (WI Bar # 1012490). This document has been approved and is distributed by the Wisconsin Association of Criminal Defense Lawyers. It is not a notice of appearance on behalf of the defendant. GF-152B may be an appropriate form to use when issuing an order on this petition.