

Board of Governors adopts policy position reaffirming the essential role of defense attorneys in the criminal justice system

By Tom Solberg, State Bar of Wisconsin

Dec. 4, 2009 – The State Bar Board of Governors voted unanimously today (with one abstention) to reaffirm the right of all criminal defendants to counsel and the duty of defense attorneys to provide vigorous representation for them.

The BOG adopted a public policy position that supplements the State Bar's prior position on [criminal practice and procedure](#) by underscoring the role of criminal defense lawyers "to represent every client with undivided loyalty and zeal" and clarifying the fundamental importance of an adversarial process designed "to ensure that justice is served."

The language approved by the board for inclusion in the [State Bar Position Statements](#) was developed by the Executive Committee in response to a request of the Criminal Law Section. The State Bar of Wisconsin takes positions on a range of policy items of importance to the legal profession by 60% majority vote of the Board of Governors, which has the authority to determine the policy positions of the State Bar.

Some governors stressed that their support for the position was not intended as a statement regarding any specific individual.

The Criminal Law Section initiated the process in November with a memorandum to State Bar leadership in response to statements made in the context of a Judicial Commission complaint regarding campaign ads.

The full text of the State Bar's Public Policy Position adopted by the BOG on December 4 regarding the right to counsel is:

In response to recent statements made in connection with a dispute over Supreme Court campaign ads, the State Bar of Wisconsin reaffirms its commitment to the right to counsel. The right of indigent defendants to counsel has been upheld by both the United States Supreme Court (*Gideon v. Wainwright*, 372 U.S. 355, 334, 9 L.Ed. 2d 799, 83 S.Ct. 792 (1963)) and the Wisconsin Supreme Court (*Carpenter & Another v. County of Dane*, 9 Wis. 249 (1858)). In fact, Wisconsin has recognized the right for over 140 years. The court reasoned that the right enumerated in Article 1, Section 7 of the Wisconsin Constitution—to be heard by counsel, to demand the nature and cause of the accusation, to meet witnesses face to face—would be a cruel mirage in the absence of legal counsel.

Vigorous representation by defense attorneys for all criminal defendants is important not only as a matter of justice for the accused, but also as a check in the adversarial process to ensure that only the truly guilty are convicted, to ensure that case dispositions are appropriate, and, indeed, to ensure that justice is served.

Every defendant, regardless of crime or prior record, is entitled under the Constitution to the assistance of counsel, and it is such counsel's sworn duty to represent every client with undivided loyalty and zeal. To suggest that the function of criminal defense lawyers is simply to try to put criminals on the street, or that attorneys for accused individuals work to "subvert" justice, betrays either a lack of understanding of the adversarial process, or a lack of fidelity to constitutional principles.

Assertions to the contrary have no place in a judicial system committed to the rule of law, fairness, and impartial justice. As the United States Supreme Court has reminded us, "Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady v. Maryland*, 373 U.S.83, 87 (1963).