

STATE OF WISCONSIN
SUPREME COURT

In the Matter of:

The Petition of Patricia K. Ballman, Thomas J. Basting, Sr., Richard T. Becker, Michelle A. Behnke, Gregory B. Conway, Robert H. Friebert, Janine P. Geske, Franklyn M. Gimbel, E. Michael McCann, Gerald M. O'Brien, Jose A. Olivieri, and G. Lane Ware, for an amendment to Supreme Court Rule 81.02 changing the hourly rate of compensation for court-appointed lawyers to \$80, indexing that rate to the Consumer Price Index, and specifying that the payment of an hourly rate less than the rate set forth in Supreme Court Rule 81.02(1) for legal services rendered pursuant to appointment by the State Public Defender under Wisconsin Statutes section 977.08 is unreasonable.

**MEMORANDUM SUPPORTING PETITION
FOR AMENDMENT OF SCR 81.02**

Petitioners, by counsel, file this memorandum in support of their Petition to Amend Supreme Court Rule 81.02 to increase compensation for appointed counsel to \$80 per hour, and also to establish that an hourly rate less than \$80 for legal services rendered pursuant to appointment by the State Public Defender is unreasonable. The petition seeks to amend an existing rule, not to create any new rule or statute.

The specific changes proposed, and the concise reasons for them, appear in the petition itself. However, Exhibit A (ABA, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, December 2004), Exhibit B (ABA, *Findings*

Concerning Contracting for the Delivery of Indigent Defense Services, July 1995), and Exhibit C (The Spangenberg Group, *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-By-State Overview*, June 2007) to this memorandum set out more fully the underlying impact on justice that inadequate rates of compensation for lawyers appointed to represent the indigent in criminal cases has in Wisconsin and elsewhere. Rates of compensation for counsel representing indigent criminal defendants vary from state to state. In federal court, under the Criminal Justice Act of 1964, the current rate of compensation for appointed counsel in criminal cases is \$125 an hour, as of January 1, 2010, and it is higher still in capital cases.

The proposed amendment would not create or affect any person's substantive or procedural rights directly. However, it would permit both lawyers representing indigent criminal defendants and the defendants themselves to assert that a rate of compensation less than \$80 per hour is unreasonable, by Supreme Court Rule.

Although the proposed rule effectively would double the rate of hourly compensation for counsel representing indigent criminal defendants, the fiscal impact is unclear and would require study. Variables include the legislature's response; the possibility that it would be cost-effective to increase the number of staff attorneys employed by the State Public Defender to reduce the number of cases

appointed to private counsel; and the possibility that expense of indigent defense would shift from the counties entirely back to the state if the legislature responds appropriately, or would not.

There are no related petitions pending before the Supreme Court to the knowledge of counsel for the petitioners.

Among the persons consulted by counsel for the petitioners are administrators of the State Public Defender's Office.

Dated in Madison, Wisconsin, March 5, 2010.

Respectfully submitted,

/s/ Dean A. Strang

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