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April 4, 2018

The Hon. Annette K. Ziegler  
Wisconsin Supreme Court  
16 East State Capital  
P.O. Box 1688  
Madison, WI 53701-1688

Dear Justice Ziegler:

I am contacting you relative to my experience in criminal defense in the private sector. I realize you are surely inundated with communications as it concerns the upcoming public hearing relative to a pay increase for counsel who accept public defender cases. However, in my capacity as a lawyer in the private sector, I felt it necessary to respectfully submit my view of this most important issue.

I was involved in the Legislature as an executive assistant for two years, and I am very familiar with the legislative judicial process. I then joined the Waukesha Co. District Attorney's Office in 1983, and was appointed District Attorney in 1988. I served in that capacity for ten terms, until I entered the race for Attorney General. Unfortunately, I was not successful in that venture. I then entered private practice, and I must tell you that providing legal representation in the private sector has greatly opened my eyes.

I am a better lawyer and a better person as a result of providing legal representation to the citizens of Wisconsin. I am able to see the full picture during the representation of my clients – whether they are accused of minor criminal offenses or heinous crimes. I am the owner and manager of a small law firm that employs three lawyers. Obviously, we typically generate lesser revenue than that of larger firms. While we often accept advocate counsel appointments and do accept some pro bono, we are unable to accept public defender cases solely for financial reasons – we would not be able to pay malpractice insurance or other firm expenses if we were routinely compensated at the rate of \$40.00 per hour, which is the current public defender rate. I do, however, accept cases when specifically requested to do so by the assigned judge.

I have been involved in literally thousands of felony and misdemeanor cases in my career, both as a prosecutor and as defense counsel. I have tried hundreds of those cases. I have always wondered how individual attorneys could accept their cases at \$40.00 per hour. I was blessed to be a government employee for the majority of my career, so I never had to make that sacrifice. Now that I am in private practice, I have the opportunity to see how expensive it is to run a firm - with the exorbitant overhead and expenses - and how difficult it can often be to deal with clients

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that desperately need competent legal representation and simply cannot afford it. I cannot imagine any justice would disagree that \$40.00 per hour is a shockingly unreasonable rate for felony representation in a public defender capacity in cases involving homicide, violent acts, sexual assaults, pornography, etc.

The State Public Defender's Office is a valuable resource and is staffed with extremely competent lawyers. However, it is simply unable to accept the massive amount of cases submitted to its office. Outside appointments of counsel are crucial for that reason. Like many firms, I would be happy to accept public defender cases, but simply cannot afford to do so. I believe I am a competent and experienced litigator who thoroughly understands the criminal justice process. The current rate of \$40.00 per hour is absurd and shocking. I simply cannot imagine dedicated and competent criminal defense lawyers literally working two jobs to "make ends meet" because they feel obligated to accept public defender appointments. I have great respect for those individuals, and it is a shocking embarrassment to our profession that many of our colleagues are unable to pay their expenses and overhead because of these unreasonable rates.

This Court has created many rules that govern our profession. I believe the Court has a responsibility to step in when it sees a rule that violates due process and shocks the consciousness of the Court. The Legislature will do as it sees fit. However, it is unconscionable that competent legal counsel simply cannot take public defender appointments – or as many appointments as he or she would prefer to accept – simply due to the current public defender rates.

I have listened to the open conference of the Court debating this rule. There is no doubt the Court has the authority to promulgate a rule that would compensate lawyers who accept these appointments at a reasonable rate. I do not believe that anyone involved in the judiciary would agree that \$40.00 per hour is a reasonable rate. This Court routinely directs the Legislature to pass various laws, and overrules the Legislature when laws are passed that do not pass constitutional muster. It is my opinion that the current allowable rate of \$40.00 per hour violates the due process of an individual who has a right to competent counsel. I believe most individuals would agree that establishing a fair reimbursement rate – which includes reasonable reimbursement for costs - would serve to provide competent counsel to our lower income or indigent citizens. Our constituency deserves better and our Constitution deserves better.

Thank you for your courtesies and consideration relative to this most important matter.

Respectfully submitted,

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