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May 1, 2018

RECEIVED
MAY 01 2018
CLERK OF SUPREME COURT
OF WISCONSIN

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688.

Re: Comments in support of Petition to Amend SCR 81.02, No. 17-06

Dear Clerk and the Hon. Chief Justice and Justices of the Wisconsin Supreme Court:

I write to this Honorable Court at this time to reiterate my and the State Bar of Wisconsin's strong support and recommendation that Your Honors approve the Petition to Amend SCR 81.02 now pending before you.

I appeared before this Court on November 9, 2010, as the representative of the Board of Governors, along with Bar President-Elect Brennan, former Milwaukee District Attorney McCann and thirteen other members of the criminal justice system to support a previous iteration of Petition No. 17-06. The State Bar's official position then, which was reiterated by the Board of Governors in 2013, on adequate private bar compensation, is as follows:

The State Bar of Wisconsin supports private practice lawyers' compensation for assigned counsel appointments at a rate that fairly compensates lawyers for their time, travel and any other costs associated with providing quality representation to their clients. Rates of compensation should be at least as much as those set by the Wisconsin Supreme Court for court-appointed attorneys. A rate of compensation less than that set by the Wisconsin Supreme Court for court appointed attorneys does not safeguard the constitutional rights of individuals accused of committing a crime. The State can guarantee constitutional safeguards by providing fair and timely reimbursements to private bar attorneys to ensure a more efficient and effective criminal justice system.

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Petition No. 17-06 asks this Honorable Court to amend Supreme Court Rule (SCR) 81.02 (Compensation) to: (1) change the hourly rate of compensation for court-appointed lawyers from \$70 to \$100 per hour; (2) include a provision in SCR 81.02 indexing future compensation rates to annual cost of living increases; and (3) "include a provision specifying that any payment for legal services rendered pursuant to an appointment by the State Public Defender under Wisconsin statutes section 977.08 of an hourly rate less than the rate set forth in Supreme Court Rule 81.02 is unreasonable." This is a modest proposal, which I sincerely hope is adopted now.

Since I last spoke before this Court on this issue in 2010, the pressing need for reform and for a reasonable increase of the private bar rate, as is now proposed, has been magnified ten-fold over the past eight years. The public defender system is currently in crisis because of the lack of qualified private bar attorneys willing to accept appointments throughout the state. Make no mistake about it, the quality of justice throughout the state is suffering because of the lack of defense counsel due to the absurdly low \$40 per hour private bar rate.

In my 41 years of practice doing criminal defense work in state and federal courts throughout Wisconsin, the court-appointed counsel rates and federal Criminal Justice Act (CJA) rates have all increased considerably. However, Wisconsin public defender private bar rates, which were \$35 per hour when the statewide system was implemented in 1978-79, and later changed to \$40, where that rate still stands today, many decades later.

This Court has the power, the imperative and the duty under its own and United States Supreme Court precedent, to guarantee that qualified counsel is available to defend indigent criminal defendants everywhere in this state. That is not happening now. I regularly receive emails from public defender offices hundreds of miles away asking for me to accept appointments in serious felony cases. I cannot do so and keep afloat the medium size law firm of which I am a partner. Solo and small office practitioners fare even worse if they accept appointments, even just a few. Of the nearly 3800 law offices in this state, nine out of ten are small firms, i.e., five or less lawyers. Seven out of ten law offices are solo practitioners.

At the current \$40 per hour rate, this amounts to handling the case on a virtual *pro bono* basis. A private law office simply cannot pay rent, staff or keep the lights on at this exceedingly low rate. This was not what was intended by this Court and the Legislature back in 1978-79, nor should this indigent defense crisis be further enabled in 2018 by inaction.

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This Honorable Court should take the lead and approve Petition No. 17-06 and require implementation and funding, just as occurred following the *Gideon* and *Argersinger* decisions fifty years ago, in order to fulfill the constitutional requirement of appointment of qualified legal counsel to represent indigent criminal defendants. Our legal system is counting on you to do the right thing.

Thank you for your consideration of these comments, from a lawyer who wants to see Wisconsin be a leader again. The State Bar will be forwarding the paper copies of this letter to the Court.

Very truly yours,



RAYMOND M. DALL'OSTO

RMD/d

statebar/priv bar petn/ 2018-05-01