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Clerk of the Supreme Court
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CLERK OF SUPREME COURT
OF WISCONSIN

Re: Rule Petition 17-06, In re Petition to Amend SCR 81.02

To All Concerned,

There have been many eloquent and insightful letters already submitted by a range of people impacted by the criminal justice system that articulate why the SPD private bar rate must be raised to adequately compensate attorneys who represent poor people accused of crimes. I write to support all those who have already written, but also to provide two additional points for the Court to consider (one personal to me and one that is perhaps a bigger picture concern). Personally, as a younger lawyer I used to take many SPD appointments to help the poor accused of crimes, to gain valuable experience in court, and in large part to make a living. Now as a more experienced lawyer, I simply cannot justify taking those appointments at \$40/hour. Federal court-appointed cases pay \$140 per hour. Private clients pay upwards of \$250/hour. Obviously, people generally act in their own economic self-interest to maximize their income except when they choose to give to charity. Given the abysmally low rate of \$40/hour, I can no longer take SPD appointments, even as an act of charity. The Sixth Amendment to the United States Constitution is not a request for charity from lawyers willing to take personal losses to defend those accused of crimes who cannot afford to pay a lawyer on their own. It is a command that the state adequately fund lawyers for those it chooses to accuse of serious crimes. \$40/hour is inadequate to do that, illustrated by my story but also by many other lawyers I know in the same position.

As for a bigger picture consideration, I submit that raising the rate would actually save the taxpayers of Wisconsin money. How? If the anecdotal and empirical evidence is accepted that tends to show the lawyers who increasingly take the majority of SPD appointments are younger, more inexperienced, more overwhelmed and generally not as skilled as those who do not, it must mean those lawyers generally obtain worse results for clients than a more experienced and skilled attorney would. That in turn means those lawyers necessarily feed defendants with longer sentences into the prison system at the cost of approximately \$38,000 per year per prisoner.¹ Just *one defendant* who serves *one extra year in prison* he or she wouldn't have with a better lawyer costs the taxpayers more

¹ See <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending>.

than paying a lawyer \$60/hour in addition to the current \$40/hour rate for *633 hours* of work ($\$60 \times 633 \text{ hours} = \$37,980$). In those 633 hours, how much would a better lawyer save their clients prison time and therefore taxpayers money? A lot! Under-funding the private bar rate merely *shifts the cost* to the prison system; it assuredly does not save money overall and most likely costs more money. And of course that does not account for intangible costs like the delays incurred by the system to process cases, or victims waiting months or years for justice, and of course for the innocent defendant who waits just as long for their day in court. The rate must be raised to attract lawyers with the experience and skills necessary to adequately defend *all* those accused of crime, not just those who can afford to pay for it. The Sixth Amendment demands it.

Sincerely,

/s/ Chris Donovan