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CLERK OF SUPREME COURT  
OF WISCONSIN

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To the Honorable Members of the Wisconsin State Supreme Court

Dear Justices,

I have practiced law for almost 43 years in the same small general practice firm located in Milwaukee, Wisconsin. When I started in 1975 the judges appointed counsel for indigent defendants and the county paid the attorneys. My recollection is that the hourly rate back then was substantially higher than now (\$50 - 60 per hour for in court work and I believe \$45 per hour for out of court work). As one demonstrated increased competence, judges assigned lawyers higher level offenses. After a few years the State Public Defenders Trial Division came into existence and all appointments came through its offices. My recollection is that there were two rates of pay, in court and out of court and each rate was more than the current \$40.00 per hour. Importantly, 40 years ago the cost of living was substantially less as was the cost of running a law firm.

According to the U.S. Department of Labor Bureau of Labor Statistics, in June 1975 the Consumer Price Index was at 53.6. As of March 2018 the CPI sits at 249.5. That is a 200% increase in the cost of living, yet the rates paid to those defending the indigent has not only not increased, it has declined here in Milwaukee County.

Let me explain what this means. The Bureau of Labor Statistics of the United States Department of Labor defines the CPI as: *"a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services."* It defines inflation as: *"the overall general upward price movement of goods and services in an economy."* If something cost \$.50 in 1975 at a 200% rate of inflation that same item would cost \$2.00. According to the Department of energy the retail price of a gallon of gas in 1975 was \$.57 per gallon. When you filled up your gas tank this morning on the way to this hearing you probably paid somewhere in the area of \$2.75 per gallon or more. That is more than a 200% increase in the cost of this vital commodity and demonstrates the true increase in the cost of living. Yet, those defending the indigent are expected to do so on wages that have been stagnant for over 40 years!

When I started law school at the University of Wisconsin my in-state tuition per semester was a bit under \$500. I believe it is now at least \$11,000 per semester (a further demonstration of the increase in the cost of living). Between summer jobs and some work during law school most of my classmates and I were able to graduate law school debt free or with minimal debt. Today, most law school graduates have not only law

school debt, but many also have debt related to their undergraduate education and the sums are staggering. How can we expect young lawyers saddled with debt to survive on \$40.00 per hour and pay their overhead?

I last accepted an appointment in the late 80's as back then, the rate was too low compared to earnings in other areas of my practice. I enjoyed the work and was very successful (3 not guilty verdicts out of the 4 first degree murder trials that I tried that year), but I had a growing family to support and I saw the increasing costs of college and the need for retirement savings and one could not realistically pay the mortgage, raise a family and put aside funds to educate children and provide for retirement on \$40 per hour.

So, you must ask yourselves, at \$40 per hour are we truly following the obligation to provide legal counsel to the indigent as set forth in the State and Federal Constitutions and *Gideon v. Wainwright* 372 U.S. 335 (1963)

As Justice Black so eloquently stated: *The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. 372 U.S. at 344.*

I submit to this Court that providing counsel at wages that have been stagnant for over 40 years constitutes a failure to provide effective legal counsel. Not that those who choose to do so are not competent or capable, but rather they are forced to subsidize the criminal justice system at great personal sacrifice. That is neither fair nor just and ultimately works to the disadvantage of the indigent defendant.

Very truly yours,  
PADWAY & PADWAY, LTD.

*M. Nicol Padway*

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A member of the firm

MNP/pm