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RE: Comment in support of Petition 17-06

To The Supreme Court of Wisconsin,

I started my career as a lawyer in Wisconsin in January, 1979, as an assistant district attorney in Green County. Back then, the State Public Defender was still in the process of going statewide as part of the reorganization of Wisconsin Court system that took effect in August 1978. Even in my inexperience, I noted that the level of representation increased that spring when the SPD started sending staff lawyers to Monroe. Some local private lawyers seemed to be "practicing out of their back pocket," without the necessary support staff or infrastructure needed to represent their clients. At times it felt like I had to protect the rights of the criminal defendants I was prosecuting, both as a matter of basic fairness and to protect the record so as not to jeopardize any conviction on appeal. When the SPD staff lawyers became involved, I found it liberating to be able to focus solely on fighting a case against defense counsel who had the support system necessary to make it a fair fight. This higher level of representation was also true of privately-paid lawyers who had the wherewithal to hire adequate support staff.

Later in 1979, I joined the SPD as a staff lawyer in the appellate division. In 1990, I transferred to the SPD trial office for the remainder of my career. I retired from the SPD in 2015.

Thus, at every point in my career, whether as a prosecutor or defense lawyer, I enjoyed the benefits of regular compensation, an excellent support staff, office space, a library, supplies, and generally everything I needed to allow me to focus on representing my clients. The caseload was always high, but my time could be devoted to practicing law.

The current SPD private bar rate is unreasonable for many reasons including the fact that it prevents a lawyer in private practice from building the kind of practice infrastructure that allows him or her to concentrate on the job at hand -- giving substance to the state and federal constitutional right to competent representation in a criminal case.

The \$40 hourly rate, set decades ago, is less than it takes to build and support such an infrastructure. It should not be read as an insult to those who still manage to take these cases to note that the inability to build and maintain a proper law office team

puts them at a substantial disadvantage when compared to the better-supported prosecution offices or even the state-funded SPD staff attorneys.

As an SPD staff lawyer<sup>1</sup>, and more recently for 15 years as a lower-level SPD local trial office manager, I have seen lawyers break off from an in-person conversation with a client to take a call on their cell phone from another client because they have no office, no office phone and no support staff to give the client the courtesy and reassurance of a live person to answer their calls. As part of my management duties, I have fielded complaint calls from incarcerated clients who can not reach their lawyers because the lawyers' cell phones can't accommodate collect calls from the jail, even to leave a message. When calling these lawyers to pass on the message from the client, I have been told that they can't afford to set up an office with a phone, much less hire someone to answer it on \$40/hour.

Others writing in support of this petition have noted that it can take weeks or months to find a qualified attorney to take a complex criminal case, and that often the SPD have to go sometimes hundreds of miles away to get someone who will take the case at the the \$40 rate. Defendants may be subjected to extended pretrial incarceration without a lawyer to investigate, file and argue a motion to modify bail. Even for those who are not in jail, it may mean repeated trips to court, loss of work hours or even being fired, all while facing the anxiety of having a pending criminal case. Victims face similar anxieties, and may also face loss of work or employment if they exercise their rights as victims to attend court proceedings that repeatedly end up being adjourned because there is no defense lawyer on board.

These months of delay at some point obviously implicate the defendants right to a speedy trial, but they also fly in the face of this Court's longstanding recognition of the public's separate right to speedy trials:

**While it is important from a defendant's point of view that he be tried promptly so that his future status is put to rest and he is either acquitted or subjected to the penalties of the law, the paramount interest is society's concern that all criminal cases be disposed of speedily.**

Hadley v. State, 66 Wis. 2d 350, 365, 225 N.W.2d 461 (1975) (Emphasis added).

The Legislature should have attended to this problem, but has not acted for decades, for whatever reason, despite being warned by this Court in 2011 that action was needed.<sup>2</sup> The urgency has only increased in the seven years since then.

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<sup>1</sup> The views stated in this letter are my own. I do not speak for the SPD.

<sup>2</sup> See, decision of Wisconsin Supreme Court on Petition 10-3 July 6, 2011, attached to the petition in this case at Appendix, pp 8-9.

Granting this petition may not in itself cause the Legislature to raise the SPD rate, but the Legislature should know that the Judiciary, as a co-equal branch of government, views the current legislatively-set rate as unreasonable, and has raised its rate for court appointments accordingly. A determination by this Court that \$70 is unreasonable must also mean that \$40 is unreasonable. That is all the petitioners are asking the Court to say.

Whether this Court considers the determination that the current, antiquated rate is unreasonable to be a matter of constitutional fact or necessary in the exercise of its duty to regulate the administration or justice in the lower courts, I urge this Court to grant the petition and make that finding now.

Sincerely,

JOHN E. TRADEWELL  
Wisconsin Bar Number 1017377

copy via email to attorneys John Birdsall and Henry Schultz