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

May 1, 2018

May it please the Court,

I am writing in support of the petition to amend SCR 81.02 (Rule Petition 17-06) filed by Attorneys John A. Birdsall and Henry R. Schultz on behalf of the Wisconsin Association of Criminal Defense Lawyers, the Wisconsin Association of Justice, and others, seeking to amend the rule to change the hourly rate of compensation from \$40 to \$100 per hour, include an indexing provision to tie future compensation rates to cost of living increases, and a provision to ensure that no attorney be compensated less than the rate set by the Court for representation of indigent criminal defendants.

The history of events that have brought us to the Constitutional Crisis in which we find ourselves, with regard to compensation for the criminal defense of indigents, is well documented. An informative summary of this history can be found in an article published by our State Bar on May 3, 2017. As you know, the \$40 per hour rate of compensation for private bar defense of indigents has remained essentially unchanged since 1978. That rate is the equivalent of \$155 per hour in 2017 dollars. Consequently, even an increase in the rate to \$100 per hour will fail to bring compensation up to 1978 levels. The State Bar's 2013 Economics of Practice Survey found that the average private attorney's hourly overhead costs were estimated to be \$41.72. Based upon overhead costs, it is impossible to make any profit providing representation to indigent criminal defendants under the current rate of compensation.

It is imperative that our Supreme Court exercise leadership to address the Constitutional Crisis set forth in the petition because the executive and legislative branches of government have failed to address this problem despite numerous attempts by groups and individuals to effectuate change through these branches of government over the past 40 years. The Court has examples of actions taken by other state Supreme Courts it can draw upon in addressing this crisis. The Supreme Courts of Alabama, Alaska, West Virginia, Mississippi, Oklahoma, and New York have all intervened to address the same issues facing Wisconsin.

Indeed, this Court acknowledged in 2011 that "Our criminal justice system is reaching a breaking point. The resources available for the defense of poor people accused of crime has fallen alarmingly, potentially compromising our constitutional responsibility to ensure that every defendant stands equal before the law and is afforded the right to a fair trial guaranteed by our constitution. If this funding crisis is not addressed we risk a constitutional crisis that could compromise the integrity of our justice system." This statement by the Court recognizes the dire nature of this problem. Six additional years of inaction by the other branches of government should underscore that this problem is not going to be addressed unless the Court takes action on the pending petition. The Court must not fail to act based

upon concerns over the costs that will be incurred by either the state or the counties. Those issues can and will be addressed by the other branches of government once they receive a clear mandate from the Court.

As trial judges, we experience, on a daily basis, the impact that the underfunding of indigent criminal defense has on the quality and integrity of our criminal justice system. These impacts often impede our ability to function effectively and efficiently. We have observed a decline in the quality of representation provided to indigent defendants. Many experienced lawyers have discontinued accepting public defender appointments out of economic necessity. As a result we face an increasing number of inexperienced and underqualified lawyers representing indigent defendants in serious criminal matters. We have seen an increasing number of requests for the appointment of new counsel and ineffective assistance of counsel claims. Cases that we are required to continue based upon ineffective assistance of counsel either through appeals or habeas corpus petitions have negative impacts on crime victims. In many instances, victims often have to endure additional proceedings, such as resentencing or even retrial, in cases that should be closed. These impacts serve to delay and frustrate victims of crime. We believe that it is beyond dispute that the criminal justice system operates at its best when each side has access to quality representation. We urge the Court to take action to protect the integrity of our criminal justice system.

Respectfully submitted,

Glenn H. Yamahiro
Circuit Court Judge
Branch 34
Milwaukee County

I am authorized to include the following Circuit Court Judges as additional signatories: Jeffrey Conen, Jeffrey Kremers, David Hansher, John Manydeeds, Joseph Sciascia, Scott Woldt, Janet Protasiewicz, Stephanie Rothstein, Karen Seifert, Michael Moran, Margaret Koehler, Ralph Ramirez, Peter Anderson, William Sosnay, Donald Zuidmulder, Mark Sanders, Ellen Berz, Mary Wagner, Anna Becker, Laura Perez, David Borowski, Eugene Gasiorkiewicz, Jennifer Weston, Joseph Boles, Carolina Stark, David Swanson, Rhonda Lanford, Craig Day, Mary Triggiano, Jeffrey Wagner, Michelle Havas, Nicholas Brazeau, Edward Stengel, Neal Nielsen, Dennis Cimpl.