



# Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

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January 19, 2018

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Crandon, WI 54520-0042

Re: Rule Petition 17-06, In re the petition to amend SCR 81.02

Dear Attorneys Birdsall & Schultz:

I am assisting the Wisconsin Supreme Court with its consideration of rule petition 17-06. At an open rules conference on June 21, 2017, the court engaged in a preliminary discussion of this matter and voted to schedule a public hearing. The public hearing will be conducted on May 16, 2018. I am aware that you were present at the open rules conference, but you may find it helpful to review the court's discussion, which can be viewed at: <http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/11659> and runs from 15:34-77:50.

The court asks that you provide a written response to the following questions by March 16, 2018:

- What is the status of related pending legislation in Wisconsin?
- How often are attorneys appointed and paid at County expense?
- How much are the Counties paying court appointed lawyers?
- In many counties the County contracts with attorneys to perform legal services for it at a rate that differs from this petition. Does this practice affect this petition?
- What is the fiscal impact of the petition, generally and to the Counties, specifically?
- What is the anticipated fiscal impact of the petition on the Supreme Court, considering that the Office of Lawyer Regulation (OLR) and the Medical Mediation Panels (MMP) currently pay attorneys \$70 per hour for their legal services, as prescribed by current rule?
- How are the federal compensation standards for court appointed lawyers set and who sets them?
- Could a rule (or statute) addressing compensation be tied to the federal standard?

- What have other states have done regarding this issue? Has it been addressed by case law, statute, or court rule?

The court also had several inter-related questions pertaining to its authority to act, particularly as to the second part of the petition:

- Is it within the court's province to act on this matter?
- Does the court have authority to address this Constitutional question administratively?
- Has this court previously used a rule amendment to deem some aspect of a statute unreasonable?
- What showing is needed to establish that there is a Constitutional issue? Does this require fact finding? How would the court, as an appellate court, make the requisite factual determinations?
- What is the standard needed to establish that the effect of inadequate compensation rates for court appointed lawyers has created a situation that rises to the level of a Constitutional issue? Beyond a reasonable doubt? Something lower?
- Has this issue ever been presented as an as-applied challenge? Why not?

Any additional written comments filed in the clerks' office or court communications with respect to this petition will be posted on the court's website at <https://www.wicourts.gov/srules/1706.htm>.

If you have specific questions or other comments, please contact me by telephone at 608-261-6642, or by email at [julie.rich@wicourts.gov](mailto:julie.rich@wicourts.gov).

Very truly yours,

/s/

Julie Anne Rich

Supreme Court Commissioner

cc: Chief Justice Patience Drake Roggensack  
Justice Shirley S. Abrahamson  
Justice Ann Walsh Bradley  
Justice Annette Kingsland Ziegler  
Justice Michael J. Gableman  
Justice Rebecca Grassl Bradley  
Justice Daniel Kelly