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April 30, 2018

Carolyn Janto, Deputy Clerk-Rules
Wisconsin Supreme Court
P.O. Box 1688
Madison, WI 53701-1688

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

VIA First Class and Email

Dear Ms. Janko:

We appreciate the opportunity to comment on In re Petition to Amend SCR 81.02. We respectfully ask the Court to adopt the proposed rule.

Edward Marion is a former head of the Criminal Appeals Unit of the Office of the Wisconsin Attorney General. As such, he supervised the handling of all felony appeals, and ancillary litigation. He is a former Dane County circuit judge and State of Wisconsin administrative law judge. He is also a former Chief of Staff to former Wisconsin Governor Tommy Thompson. He has been practicing law for 44 years.

Margaret Maroney is a former State Public Defender in the Appellate Division. She served in that capacity for 28 years. She is also a former Supervising Attorney at the University of Wisconsin's Legal Assistance to Inmates program, and a clerk to the Hon. Martha Bablitch, judge of the court of appeals of Wisconsin. Margaret has been practicing law for 40 years.

Several facts about the current, broken system of lawyer compensation for criminal defense are clear:

- The State Public Defender has difficulty, particularly in rural counties, finding lawyers willing to take cases, meaning many indigent defendants spend more time in jail than similarly situated people with the financial ability to hire an attorney.

- The current \$40-an-hour rate does not cover the average lawyer's costs of operating a law practice.
- The existing rate, in some counties, too often attracts inexperienced lawyers for whom the poor pay provides no financial incentive to provide zealous representation to their financially poor clients.
- Raising the rate to \$100 will drastically improve the number of qualified attorneys willing to accept SPD appointments.
- The Legislature has failed to address the issue.
- Lawyers who do the same type of work in the federal system are paid \$140 per hour.
- The U.S. Courts, in a statement last month announcing the increase from \$132, said that "Surveys showed that it was getting more difficult to retain qualified and experienced panel attorneys in district courts at the prior rates."

The impact on criminal defendants is too great to be ignored. But, the impact on the overall criminal justice system is an equally compelling reason to increase lawyer compensation to the higher -although obviously still modest- \$100 per hour.

Marc A Levin, of the criminal justice group Right on Crime,¹ wrote in his paper, *A New Conservative Approach to Justice: Serve the Poor*,² wrote:

Of all the services that governments provide to the poor, . . . [the right to counsel] is arguably the one most defensible on libertarian grounds [because] judicial proceedings, including the opportunity to present a defense, are an intrinsic part of a broader service that government provides to the public as a whole – law enforcement and social protection.

In *Reforming Indigent Defense: How Free Market Principles Can Help to Fix a Broken System*,³ published by the Cato Institute, Stephen J. Schulhofer and David D. Friedman, professor at New York University School of Law and Santa Clara University School of Law, respectively, wrote: "Hourly rates vary from low in some jurisdictions to derisory in others." They cited a 2007 survey finding that "many jurisdictions still paying only \$40 or \$50 per hour, rates that are inadequate even to meet the attorney's overhead." At the time of the survey Wisconsin was at \$40 per hour, the lowest compensation rate in the nation. Eleven years later, Wisconsin still has the lowest compensation rate in the nation.

¹ Right on Crime seeks "conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs." <http://rightoncrime.com>

² <http://rightoncrime.com/2011/04/a-conservative-approach-to-indigent-defense/>

³ <https://object.cato.org/sites/cato.org/files/pubs/pdf/pa666.pdf>

As criminal law practitioners from "both sides" of the courtroom (as well as behind the bench), we respectfully urge the Court to adopt the proposed rule.

Very truly yours,

Marion & Maroney LLC

/S/ Edward S. Marion

Edward S. Marion

/S/ Margaret A. Maroney

Margaret A. Maroney

cc VIA Email: John A. Birdsall and Henry R. Schultz, Counsel for Petitioners