

Monday, April 30, 2018

VIA: email only (Julie.rich@wicourts.gov)

Clerk of the Supreme Court
Attn: Deputy Clerk-Rules
P. O. Box 1688
Madison, WI 53701-1688

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CLERK OF SUPREME COURT
OF WISCONSIN

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

To the Honorable Justices of the Supreme Court of Wisconsin:

I write in support of pending Rule Petition 17-06, In re petition to amend SCR 81.02. I urge the Court to adopt this rule raising rates of compensation for State Public Defender-appointed attorneys.

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God." I made this oath in 2011. And for the last 7 years I have dedicated my practice to State Public Defender (SPD) appointed clients. If you were able to review all cases in which I have appeared over the years, you would find that the vast majority of them are SPD appointments. I do not accept these cases, because it makes me rich. I accept them out of a sense of duty to defend the defenseless, and to remember those in prison as though I were there, together with them (Heb. 13:3). After representing so many people accused of crimes, I think my comments about the current state of the SPD appointment system carry some weight.

It is extremely difficult to maintain a private law office devoted to SPD cases. For the first several years of my practice, my personal income was so low that my kids and I lived on food stamps and Badger Care. I bought one of my two suits for \$17.00 at a thrift store, because I could not afford to buy a new one. Many of my own SPD-appointed clients had a higher annual income than I did. I remarried a couple of years ago, and my wife's income now enables me to continue serving the poor without requiring my family to rely on State assistance. But without her dedicated commitment to serving the poor and without her second income, I would likely still be dependent upon the State to feed my kids. Is it right to use the poor to serve the poor?

If devotion to public defense is so costly to me, why do I not just accept a fewer number of SPD appointments and a greater number of private-paying clients or court appointments? The very act of posing that question shows you why SPD pay rates need to be increased. How will you ever keep the skilled services of qualified attorneys, if those attorneys must reduce their SPD appointed representations in order to accept a greater number of more lucrative cases? And we who regularly accept SPD appointments must do that, because we cannot afford to pay for the basic requirements of a law office without the greater income of more lucrative cases.

After 7 years of practicing law, local judges have begun to appoint me to more court-appointed cases. Because I cannot successfully operate a law practice only (or even largely) on SPD appointed case income, I am compelled to accept more lucrative cases when the opportunity arises. But for every court-appointed case that I accept, I reject another SPD-appointed case. I do not have the time or office resources to accept both. I am forced to choose. And I have to choose the court-appointed cases over SPD appointments.

Do you have any idea how difficult it is for me to write a well-researched motion or brief without the aid of Westlaw or Lexus? I do all of my legal research using the free version of Fastcase that comes with my State Bar membership. I cannot afford to pay the subscription fees for better research tools. I can barely maintain the small print library that I have. Of course, that means I have no access to scope notes, treatises, journal articles, or even a reliable means of determining whether a case has been overruled or not! I do not even have reasonable access to print versions of these tools, because I practice in a rural area. The St. Croix County and Pierce County law libraries are poor, inefficient and out-of-date. I think I do a good job with the resources that I have available to me. But I know my clients would be better served, if I had enough money to purchase a subscription to Westlaw. That is why I have to reject SPD appointments in order to accept more lucrative cases.

If you would only increase SPD reimbursement rates, I could afford to devote more time to SPD appointments and have the money to invest in quality research tools. But at current rates of reimbursement, I cannot afford to do both.

One final observation: Trials of SPD-appointed cases are essential to maintaining justice in our current, over-used system of plea-bargaining. Even if trials are relatively few and far between—I think I only tried 7 or 8 cases last calendar year—they are the only thing that protects the people from the over-reach of the State. Trials of SPD-appointed cases are essential, because SPD-appointed clients are free to elect trial without having to pay for it. They are able to make their defense-related decisions without regard to their own financial resources.

I have experimented over the years with different ways of charging private-paying clients for my services, but I have not yet found a way to prevent money from influencing their decisions. In the end, private-paying clients always have to decide whether they have sufficient money to purchase a trial. SPD-appointed clients do not. When justice demands a trial, they request a trial, and I litigate a trial. Private clients always check their bank account first. Justice should not be for sale, and the trial of SPD-appointed cases ensures that our system remains just.

But what attorney can afford to devote so much time to skilful trial litigation for \$40.00 per hour? And who can afford, for \$25.00 per hour, to drive an hour or more to represent an SPD-appointed client in a far away county? (I almost always reject every SPD appointment venued more than 45 minutes from my office.) Heaven knows I cannot even afford to purchase the electronic equipment I need to present a good Power Point slide show during closing argument at my trials. I often have to ask the State, if I can borrow their speakers or overhead projector to use at trial. I long for the day my office has enough money to buy an Elmo! With those considerations, I do not dare accept an SPD appointment far from home.

This is not about raising my own income; though I would love to be able to replace my 7-year old, \$17.00, used, thread-bear, thrift-store suit. This is about providing reasonable legal defense to indigent clients. It is oxymoronic: In order to accept SPD cases, I have to reject SPD cases in favor of more lucrative ones. Please tell me how that serves the oath I swore in 2011 to never reject, from any consideration personal to myself, the cause of the defenseless or oppressed.

The long-term cost to Wisconsin of an under-funded public defender system is the disappearance of justice from our courtrooms. If we truly believe in our adversarial system of justice, then we

have to fund both prosecution and defense. Otherwise, we are merely giving lip-service to an ideal that we have already abandoned. I urge you to adopt the pending petition to amend SCR 81.02. The integrity of the attorney's oath that you administer each year depends upon it. Let it not be empty words. Thank you for considering my comments.

Electronically signed:

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