

Comment on Petition 17-06

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To the Justices of the Wisconsin Supreme Court:

I have been a criminal defense lawyer for thirty seven years, practicing in two dozen counties around the state. I began my career in the Office of the State Public Defender and transitioned to private practice in 1989. For a number of years I continued to serve indigent clients through the appointment system, however, at some point I realized that the payment I received no longer covered my overhead. I stopped taking appointments. I have not taken an appointed case in years.

Over the years, I have gotten many calls from people who are represented by appointed lawyers. Many of the clients are concerned because they have not spoken to their lawyer, cannot reach them on the phone and don't understand the process that will dictate their fate. I look their cases up on the Circuit Court Access program, try to help them understand where they are in the process and encourage them to keep trying to reach their lawyer. Sometimes, I explain that they can ask for a new lawyer if their current lawyer is not communicating with them.

I don't know why their lawyers are not responding to their calls but I imagine the lawyers are overworked, understaffed, under supported and cannot find the time to meaningfully communicate with their clients. I understand that this is the ethical responsibility of the individual lawyer but it is also the responsibility of the government to provide constitutionally adequate counsel to those who cannot afford it. If our government grossly underpays the lawyers it provides for the poor, we will continue to see indigent clients who are under served by their overworked lawyers.

The Wisconsin Supreme Court recognized long before the federal courts that indigent defendants

should have the services of appointed counsel and that they should be paid for their services. The court rejected that argument that lawyers should volunteer their services.

Is it said that the court should, under such circumstances, assign the accused counsel, who must perform services gratuitously? But why should an attorney be required to devote his time, attention and all the energies of his nature, to the defense of a criminal, for nothing? It may be that he is interested in seeing justice done, but really not more so than every other citizen. It is the boast of the profession that its members have ever been ready to volunteer their services in behalf of the unfortunate, despised, degraded criminal, so that he should have a fair trial. But is it just to impose upon them the burden of laborious and gratuitous services, or the alternative of witnessing all principles of law and justice outraged in the conviction of an undefended prisoner? It seems eminently proper and just that the county, even in the absence of all statutory provision imposing the obligation, should pay an attorney for defending a destitute criminal.

Carpenter v. Dane Cty., 9 Wis. 274, 277 (1859).

What the court recognized over one hundred and fifty years ago still rings true. Lawyers should not be in the position of sacrificing their obligations to their family and staff or risk seeing justice denied to the poor. It is time to act. This court has defended the right to counsel many times. It is time to do it again.

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