Date: March 29, 2018

To: Clerk of Supreme Court,
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI, 53701-1688
clerk@wicourts.gov

CC: carrie.janto@wicourts.gov
Attorney John Birdsall
Attorney Henry Schultz

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

Deputy Clerk,

In accordance with your March 7, 2018 letter I am filing this comment (1 original & 9 copies) expressing my objection to the courts consideration of increasing public defender pay (17-06) on the following basis.

Wis. Stat 977.08(4m) *Appointment of counsel* establishes a $40 rule, in conflict with SCR 81.02 presently set at $70 which other comments prove judges don't follow anyway. This proposal does not address this existing conflict, insure administration of justice or assure effective representation. Neither does it reference any information in the quarterly reports as defined in Wis. Stat 977.085, only a report from JSOnline and the apparent mob emotion which does not include any objective review of actual caseloads of the Public Defenders office or locally significant numbers, caseloads, and costs. Only one county in the data presented (Waushara, pop 24,162 [47 of 72]) claims overage with detailed amount while at least 5 indicate under budget (Grant[27], Calumet [29], Kewaunee[52], Adams[53], Florence [72]). You would think the state bar could solicit participation information from their 15,000 active members (sort by county) but it would likely only show that the majority of attorneys do not share Attorney Kiefer's moral fortitude demonstrated through participation in court appointment. Alternately, counties could study Grant and Calumet practices regarding appointment of counsel cost management.

Having this proposal initiated by an attorney interferes with each county's authority to establish local rates. These attorneys are asking you to be their sports agent in financial negotiations with local county government which is outside of the scope of this court's constitutional & statutory authority. It reeks of guild favoritism under the guise of interest for the poor. While I empathize with the comments of Attorney Kiefer, I don't believe the court should expect him to take an extreme case like that every year.

Even though our current pay may be the lowest in the US by some measurements, it is commensurate of our state having the lowest requirements to be an attorney. As the only state in the US that still observes the ABA injudicious practice of diploma

privilege[1], why would we assume to qualify anywhere else on the list but the very bottom? I have a sworn affidavit of a current Deputy Clerk of Court[2] that states the Supreme Court uses non-public records to determine case eligibility for review. The appellate overturn rate [3](15%, 1 in 8 appeals) and volume of OLR decisions (69 of 180, 38% of SC decisions in 2016 & 2017) shows neither diploma privilege nor the Wisconsin Bar exam insure competent attorneys & judges such that justice prevails; it attracts those that would otherwise never qualify to practice law in other states and saturates our overtaxed system with unqualified ilk. In a world of "5 nines" and "six sigma", our courts barely achieve one "eight" on a universal quality scale.

The median household income in Wisconsin is $54,610[4]. The current $40/hour rate *2000 hrs/year = $80,000 per lawyer; 46% higher than household incomes. In homes with a lawyer + 2nd income or law firms > 1 attorney, it only increases this disparity. This is pure, unadulterated greed that is pervasive in our corrupt court system. Average federal compensation for Staff Attorneys (CL 23-28) is $66,893K, a.k.a. $33.40/hour[5]. Other Wisconsin industries could easily make a more valid claim[6].

Even when a lawyer makes $40/hour under the current calculation, the expense of representation in our failing court system is not avoided by the defendant. Wis. Stat 48.275 (2), 757.66, 938.275 (2), 973.06 (1) (e), and 977.076 (1) all allow this expense to be recovered from the defendant, even if found innocent or falsely accused by the district attorney (as public defenders are not appointed in civil & non-criminal matters). If the rate is increased, the expense recoverable from the litigant also goes up. Court appointed attorneys are only ordered as a last resort, not as a default, and are often denied when income is above poverty level ($12,060 for individual, a.k.a. $6.03/hour), Min wage is $7.25 or $14,500 rendering a party with full time job ineligible. In a scenario where a litigant can't afford the attorney in the first place, this proposal would only absurdly defer a larger financial burden on the litigant for the immediate profit of state bar members

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[1] https://www.americanbar.org/publications/syllabus_home/volume-47-2015-2016/syllabus-spring-2016--47-3-/focus-on-bar-admissions.html The ABA Council discourages such a procedure, instead providing that every candidate for admission should be "examined by public authority to determine fitness for admission." (Preface to *ABA Standards for Approval of Law Schools*¶ 1.) 2014 ABA counsel Statements section 3. https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_council_statements.authcheckdam.pdf

[2] Dane County 2018CV318 03-26-2018 affidavit.

[3] Wisconsin Judicial Commission Annual Report 2017 https://www.wicourts.gov/courts/committees/judicialcommission/annualreport.pdf

[4] https://www.census.gov/quickfacts/WI

[5] http://www.uscourts.gov/careers/compensation/court-personnel-system-pay-rates-non-law-enforcement-officer http://www.uscourts.gov/file/23496/download

[6] The annual "practice" overhead (not per attorney overhead) expenses ($102,050) used in calculations are baseless and not unique to legal industry, as it doesn't factor multiple attorneys within a common practice. A similar analysis of the teaching or agrarian industries would likely show a similar negative overhead rate of return. Attorneys can lower "practice" costs by moving to lower rent facilities or being employed by a larger practice and sharing these expenses. Law firms that are predominantly located in high rent districts inflate unnecessary overhead.

who wouldn't take the case directly or pro bono. The belief that this policy costs $31.8M is miscalculated as nowhere does that number reflect amounts recovered according to aforementioned Wis. Stats. All you are doing is establishing a minimum wage of $100 hour for fellow bar members.

This proposal does nothing to improve the quality or integrity of the judicial system. It is just a bunch of greedy people trying to fatten their wallets in a corrupt system on the backs and purses of the unrepresented & general public through guild favoritism.

And I would know. As concrete, empirical evidence, 2013CM2211 is no anecdote. I was victimized by the *compromised integrity of the justice system* when I was falsely accused of threatening a judge, a felony 940.203. I was charged with criminal disorderly conduct, a misdemeanor 947.01. The accusations were fraudulent, but the DA had to file something to appease the ego of an unethical judge with unchecked hubris who was caught falsifying court records in 2011AP1899. As I was criminally charged, I spent $700 for an attorney. And appointed another attorney when he quit (keeping the $700) when trial was scheduled. And another when he withdrew. I interviewed more than 60 attorneys, none of which would take my case to trial for more money then I had access to. My case didn't need expert witnesses, investigators, or an extensive office staff. It needed honesty, integrity, and accountability which money doesn't purchase and was woefully lacking in both the district attorney's office and the 1st judicial district where the matter was initiated & tried. It took 2 years to go to trial, 2 days in trial, yet less than 1 hour for 12 honest people to find me not guilty. However, even after being found not guilty, the bigotry and unchecked hubris of the 1st district & judges continued when they tried to recover appointed attorney costs, even after the County went on record that it wasn't pursuing recovery of this expense. This corruption is captured in the 10/12/2015 statement of the post-trial judge when it was said "Just because you were found not guilty doesn't mean you are innocent". This case embodies why attorneys won't accept appointments in front of our inept judiciary; the true reason has nothing to do with reimbursement rates, it's the lack of ethics pervasive in the third branch.

If you want to fix the injustices experienced the court system, paying attorneys more doesn't fix anything anymore than the geographic presence of where a person went to law school insures competency in the local law[7]. The logic demonstrated in this petition is fundamentally flawed.

Fix the "*integrity of our justice system*" by making sure the judges and attorneys in the system are qualified, ethical people. Require all of them to pass a standard test to demonstrate competency regardless of pedigree, just as our doctors are obligated to do[8]. Given the overwhelming evidence that neither diploma privilege nor the current state bar exam weed out incompetency or guarantee "*effective assistance of counsel*", adopt the Uniform Bar Exam as this measurement tool, a test accepted by more than 30 other states

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[7] While the state may have prevailed in Huffman v. Montana Supreme Court, 372 F. Supp. 1175 - Dist. Court, D. Montana 1974, Montana intelligently abolished Diploma privilege in 1983.
[8] http://www.usmle.org/about/

if you want to intelligently compare yourself to them on compensation scales. **Raising the rate** doesn't fix as much as **raising the standard** by adopting the UBE. In fact, raising the minimum wage doesn't fix anything if the attorney and/or judge wasn't qualified in the first place. Any peril experienced by the court or constitutional crisis is caused by your lax discipline letting this greed withhold competency & allowing mass unqualified individuals to practice law, not underfunding by the government. Money doesn't insure ethics whereas measured standards and accountability do.

Until the rampant corruption and incompetence pervasive in the court officials, whether it is an unethical attorney, incompetent judge, or supreme court that makes decisions on "non-public" memoranda in lieu of THE public record is addressed, (*incentivized to provide minimal representation* sounds like a euphemism for racketeering?) no amount of money will fix this problem that doesn't always require expensive expert witnesses, investigators, and fancy offices. It doesn't address the fundamental problem of the court's lack of trying to get it right the first time (see appellate reversal rates mentioned heretofore). The argument that these court assignments are predominately taken by underqualified attorneys is not fixed by paying everyone more.

And the vultures looking to get fat on this corruption at the expense of people who can't afford representation but will still get the bill will continue to waste your time with proposals like this and 10-03. All of you should be ashamed at the unrepentant greed you are demonstrating in this action. God himself as your attorney can't insure you a fair trial in Wisconsin's corrupt court system when the judge and opposing counsel have no clue what they are doing. It only masks the ineptitude resulting from perpetuating diploma privilege.

In summary, rather than running this puppy mill flooding the local market with unqualified lawyers and blaming the dog food for why there is so much poop on the lawn, clean up your act by only allowing qualified, ethical lawyers to practice, which will in turn assist in improving a litigants chance to get justice the first time thereby lowering workload at all levels of the court closer to the current fiscal restraints of state budgets.

I'll leave you with one final thought. If all the money in the world doesn't instantly make me a rocket scientist or ballerina, why would it make someone a better lawyer?

Thank you for your consideration of the points raised in this commentary.

Martin Hying
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PS. It should go without saying that any "screening of comments" shall be in compliance with US Supreme Court decisions including **Craig v. Harney, 331 US 367, 374 Supreme Court (1947)** which states "There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it"