



Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

110 E. MAIN STREET, SUITE 440

MADISON, WISCONSIN 53703

Nancy A. Kopp
Julie A. Rich
David W. Runke
Mark A. Neuser
Commissioners

Telephone (608) 266-7442

January 19, 2018

John A. Birdsall
Birdsall Law Offices, S.C.
1110 N. Old World Third Street
Suite 218
Milwaukee, WI 53203

Henry R. Schultz
Schultz Law Office
P.O. Box 42
300 East Pioneer Street
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.

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