



**STATE BAR OF WISCONSIN**  
*Leaders in the Law. Advocates for Justice.®*

**FILED**

**DEC 13 2024**

**CLERK OF SUPREME COURT  
OF WISCONSIN**

December 13, 2024

To: Chief Justice Annette Kingsland Ziegler  
Justice Ann Walsh Bradley  
Justice Rebecca Grassl Bradley  
Justice Rebecca Frank Dallet  
Justice Brian Hagedorn  
Justice Jill J. Karofsky  
Justice Janet C. Protasiewicz

Re: Rule Petition 24-05, Attorney Assessments for Public Interest Legal Services

The State Bar of Wisconsin thanks the Court for extending the Bar's time to provide comments on Petition 24-05 (the "Petition"), which would increase the annual attorney assessments for the Public Interest Legal Services Fund (the "PILS Assessment") by \$25 commencing July 1, 2025, and by another \$25 commencing July 1, 2027, for a total annual assessment of \$100 from July 1, 2027 forward. The Board of Governors discussed the Petition at its Meetings on September 20 and December 6, 2024, and has authorized me to share with the Court the results of a Member survey discussed below, a summary of the arguments offered by Members and Bar Leadership for and against the Petition, and a few possible alternatives to adopting the Petition as written. The Bar does not take a binary position entirely for or entirely against the Petition. Rather, as an organization representing Members with divided opinions on this subject (as reflected in the survey results below), the Bar presents the views and arguments expressed by our Members both in support of and in opposition to the Petition for the Court's consideration.

Before turning to the Member survey results, it is important to note that those on both sides of the debate generally agree that civil legal aid is critical and that the Petitioners provide vital services to those who cannot afford civil representation. Further, both sides agree that only the legislature can provide the full funding needed for civil legal aid, and, within our state government structure, the legislature is the branch of government best suited to providing the needed funding through tax revenue. The difference of opinion largely stems from a disagreement as to how to fund these services in the absence of legislative action. But that difference of opinion over how to fund the work should not distract from the Bar's strong support for the work itself. To that end, the Bar thanks Petitioners for bringing this important issue forward and for the time Petitioners have spent discussing the Petition with the Bar and the Board of Governors.

Because Bar Members and Leadership agree that only the legislature can truly solve this problem, regardless of the outcome of the Petition, the Bar intends to spearhead an aggressive advocacy campaign for a comprehensive package of proposals for state funding of civil legal aid. The Bar would be happy to join forces with Petitioners or any other interested parties in pursuit of this goal.

With that said, I provide below a summary of the survey conducted by the Bar, its results, and the comments made by Members and Leadership in discussing this important issue.

### **An Informal Survey Of Bar Members Revealed Widespread Opposition To The Petition**

Between October 31 and November 21, 2024, the Bar conducted an informal survey (“Survey”) to gather feedback from its dues-paying Members who would be affected by the proposed change in the Petition. The Survey: provided a brief description of the Petition, a summary of arguments that have been offered in support of and in opposition to the Petition and links to Petitioners’ supporting memorandum; asked recipients whether they supported or opposed the Petition; and invited comments. Recipients were also asked to indicate the size of their firm or office and its location. This was not a scientific poll, nor were efforts taken to ensure that the results were statistically representative of the Membership. Instead, the Survey constituted an invitation for affected Members to express their views on the Petition.

The Bar received responses to the Survey from approximately 3,000 Members out of over 18,000 invited to participate in the Survey, indicating a strong level of interest in the Petition by Bar Membership. Of the 3,002 Members who indicated whether they supported or opposed the Petition, 1,052 Members (35.04%) supported the Petition and 1,950 Members (64.96%) opposed the Petition. Among the roughly 800 Solo Practitioners who responded to the Survey and indicated whether they supported or opposed the Petition<sup>1</sup> (Solo Practitioners represent approximately 75% of overall Bar Membership), 25.8% supported and 74.2% opposed the Petition. Further, of the approximately 600 Non-Resident Members who responded to the Survey, around 24.8% supported and 73.8% opposed the Petition. Correspondingly, of the roughly 2,400 Resident Members who responded to the Survey, approximately 36.9% supported and 61% opposed the Petition. The highest level of support for the Petition was among Members who work in offices with between 16 and 20 lawyers, who voted 45.4% in support and 54.6% in opposition to the Petition. Approximately 40% of Members who responded to the Survey (1,199) provided written comments. A graphical breakdown of the Survey results is enclosed with this letter for the benefit of the Court.

In sum, approximately two-thirds of Survey participants overall oppose the Petition. The opposition to the Petition was strongest among the Solo Practitioners and Non-Resident Members who responded to the Survey, and a majority of respondents from firms and offices of every size opposed the Petition.<sup>2</sup>

---

<sup>1</sup> The number of responses varies across questions because not all participants answered every question. For example, while 805 respondents indicated they were Solo Practitioners, not all of those respondents indicated a position on the Petition. These variations are small and do not have a material impact on the results.

<sup>2</sup> Notably, after the Board of Governors’ discussion at its September Meeting, many Governors discussed the Petition with Members in their districts or the Sections to which they act as liaison, and generally reported that Members are highly divided on whether the Petition should be adopted.

### **A Summary of Arguments Against The Petition**

Because a super-majority of Survey respondents opposed the Petition, I will first address the reasons offered in opposition. Many opponents believe that it is fundamentally wrong or unfair to saddle lawyers with the burden of addressing a broader public need. Societal needs are generally addressed through taxation borne by all residents. To require one profession to carry the burden of an issue affecting everyone struck some Members as contrary to bedrock principles of democratic government and the rule of law. No other profession is required to carry a similar burden simply because a public need is applicable to their field. In that sense, the PILS Assessment is significantly different from the other fees attorneys pay as costs arising from the practice of law to the Office of Lawyer Regulation (“OLR”), the Board of Bar Examiners (“BBE”), and the Wisconsin Lawyers’ Fund for Client Protection (“Client Protection Fund”).

Petitioners argue that lawyers have a special ethical responsibility to provide funding for civil legal aid, but it is difficult to draw a straight line between the Attorney Oath or the Rules of Professional Conduct for Attorneys and a \$25-\$50 annual increase in the PILS Assessment. At the level of generality required to make that argument, virtually any law-related expense could be deemed to invoke attorneys’ ethical obligations. Some opponents also believe that Petitioners conflate the difference between professional responsibility and morale beliefs. Certainly, many attorneys believe they have an ethical imperative to aid, financially or through their labor, the needs of those who cannot afford civil legal services. But that obligation stems from a personal code of ethics, not rooted in any professional responsibilities for attorneys. Opponents argue that the law should not legislate individual morality, and that doing so sets us on a slippery slope. For instance, some Members argue that in terms of their individual ethics, they believe they have a higher responsibility to feed the hungry, shelter the homeless, or care for the sick, as opposed to their responsibility to provide civil legal aid. To impose an ethical hierarchy on attorneys contrary to their individual beliefs struck some Members as offensive and wrong.

Petitioners argue that it serves lawyers’ self-interest to fund civil legal aid, asserting that parties represented by counsel are more likely to reach reasonable settlements and work efficiently with lawyers on the other side to secure resolution of claims. Members in opposition noted that if attorneys agreed with this argument, they would make (and undoubtedly many are making) voluntary contributions to the Wisconsin Trust Account Foundation, Inc. (“WisTAF”). But a mandatory assessment equally sweeps in those who agree and those who disagree. Along those lines, some opponents contend that a forced contribution of this kind could have a chilling or perverse effect on lawyers’ willingness to make voluntary contributions of their labor or resources to the legal community.

Relatedly, opponents argue that not only do lawyers give back significantly to their communities on a volunteer basis and make annual contributions through the current PILS Assessment in excess of \$900,000, but the funds raised through the IOLTA program are generated because of the work attorneys do and are a fruit of their labor. According to WisTAF’s 2023

Annual Report, WisTAF generated more than \$4.2 million in IOLTA income in 2023.<sup>3</sup> The original 2005 PILS Assessment was imposed at a time of historically low interest rates. Now Petitioners seek to double the assessment at a time of significantly higher interest rates, undermining the argument that there is a unique need to increase the Assessment now.

Moreover, some opponents believe that the Assessment may constitute some form of tax, which invokes constitutional implications. Petitioners reasonably argue that the Court in adopting the original Assessment must have at least implicitly believed that doing so was constitutional, and point to language suggesting that the Court directly analyzed this concern. Opponents note that the constitutionality of this Assessment has not been tested through the adversarial legal process with full briefing and argument by interested parties on both sides. Others argue that even if the Assessment is not a tax for constitutional purposes, it still effectively serves as one, and it is therefore inappropriate for the same reason the Wisconsin Constitution places the authority to tax exclusively within the power of the legislature.

Some opponents take a more practical approach and suggest that the additional funds that would be collected if the Petition were adopted would serve only as a band-aid, addressing a small fraction of the need and potentially taking pressure off the legislature to act. Other Members expressed concern that turning again to attorneys as a source of funding sets a bad precedent for future requests and the perception that attorneys are a viable, effective, go-to funding source (or worse, seeking funding through lawyers is the path of least resistance). In addition, some opponents assert that attorneys who serve underrepresented communities may be hit hardest by a flat assessment, for instance attorneys who take public appointments and count every dollar. Younger Members noted that recent graduates face significant financial burdens, including steadily increasing law-school debt.

Lastly, some Members pointed out that many of the solutions proposed for addressing the needs of underrepresented communities involve providing economic incentives to attorneys who serve those communities. To adopt an across-the-board increase in the cost of practicing law seems to run against the efficacy of those incentives. Other Members noted that Senior Active Members and Non-Resident Attorneys may decide to forfeit their licenses due to the permanent increase in cost, reducing not only PILS funds but also funds that are distributed to the BBE, OLR, and Client Protection Fund.

### **Summary Of Arguments Supporting The Petition**

Petitioners have well stated their arguments in support of the Petition, and I will not repeat those arguments here, other than to say that Petitioners' arguments resonated strongly with many Bar Members and Leaders.

In addition to the arguments Petitioners offer, many Members expressed skepticism that the legislature would act promptly (or ever) to address this problem, regardless of everyone's best

---

<sup>3</sup> See Wisconsin Trust Account Foundation, Inc., 2023 Annual Report, at 13, available at: [https://www.wistaf.org/doc/WisTAF\\_Annual\\_Report-2023-Final-Web.pdf](https://www.wistaf.org/doc/WisTAF_Annual_Report-2023-Final-Web.pdf).

efforts, noting that the legislature has not provided civil legal aid funding since 2015, and that Wisconsin ranks near the bottom among the 50 states in terms of funding civil legal aid. The Petition presents a clear, concrete, and certain increase in funding, compared to a murky, intangible, and uncertain possibility that the legislature might act. Members in support also noted that while there is no question that adopting the Petition will not completely solve the problem, there is also little question that the funds raised will help. In the face of uncertain legislative action, supporters argue that the Petition is something lawyers can do, as opposed to waiting for legislative grace beyond our control. Many Members found the presentation Petitioners make as to the steadily increasing need for civil legal aid, coupled with the diminished buying power of the Assessment due to inflation, to be very compelling and requiring a clear answer. A significant number of Members believe that lawyers should lead the charge for civil legal-aid funding, and argue that the example set by attorneys would present a more compelling case to the legislature to increase funding, and argue that even if that effort is unsuccessful it is the right thing to do.

Supporters also note that the Survey was not a scientific poll (it would be unlikely to pass rigorous quantitative challenge as to its validity and reliability), and argue that this kind of survey would naturally be skewed in favor of opponents. If you ask someone: “do you want to pay more money,” the answer is almost always “no.” Along those lines, supporters pointed out that only a fraction of the total Bar Membership responded to the Survey (less than 20% of dues-paying Members participated), suggesting that the vast majority of Members do not have strong feelings either way.

Other supporters note that the annual PILS Assessment (whether at \$50, \$75 or \$100) represents a small fraction of even the most modestly compensated lawyer’s annual income, and suggest that opponents greatly overstate the economic hardship on attorneys. Juxtaposed against the life-changing impact that civil legal-aid providers can have on each client served, and the heartbreaking numbers of clients that providers have to turn away due to lack of funding, the requested increase does not seem proportionately to be a tremendous burden. Under the circumstances, many Members feel that attorneys have an ethical obligation to support civil legal-aid funding, noting that the Attorney Oath prohibits lawyers from rejecting the cause of the defenseless or oppressed for reasons motivated by personal monetary gain.

#### **Alternative Proposals Suggested By Members**

Members suggested a few tangible alternatives to the Petition. The first was to spread out the increase over a greater number of years, for instance mandating a \$5 increase every year until the \$100 threshold is reached. Supporters of that alternative argue that this would greatly reduce the burden on Wisconsin-licensed attorneys while still addressing the inflationary concerns raised by Petitioners. Many Members noted that the elevated income from the IOLTA program due to historically higher interest rates permits a more graduated approach.

Other Members propose that the assessment should be adjusted for inflation and normalized to the 2005 initial levels, either on a one-time or a periodic basis. Supporters of that position contend that this approach will significantly reduce the economic burden on attorneys, as there should be at least some correlation between overall rising prices and increases in attorneys’

fees over time. Other Members suggested that annual dues statements should contain an option for a voluntary contribution to the PILSF, and some believe that such voluntary contributions may even exceed the funds raised if the Petition were granted. Advancing similar arguments, some Members believe that the PILSF contribution should be entirely voluntary.

### **Conclusion**

At minimum, the Bar's Members are highly divided on the question of the Petition. There are certainly strong arguments on both sides of the debate. Rather than taking a binary approach and silencing the opposing view, the Bar has authorized me to present the Survey data and the competing views of Members in support and opposition, so that all Members can be heard for the Court's consideration in evaluating the Petition. Again, the Bar thanks the Court for granting it additional time to consider the Petition.

Finally, I would like the opportunity to speak on behalf of the State Bar at the public hearing.

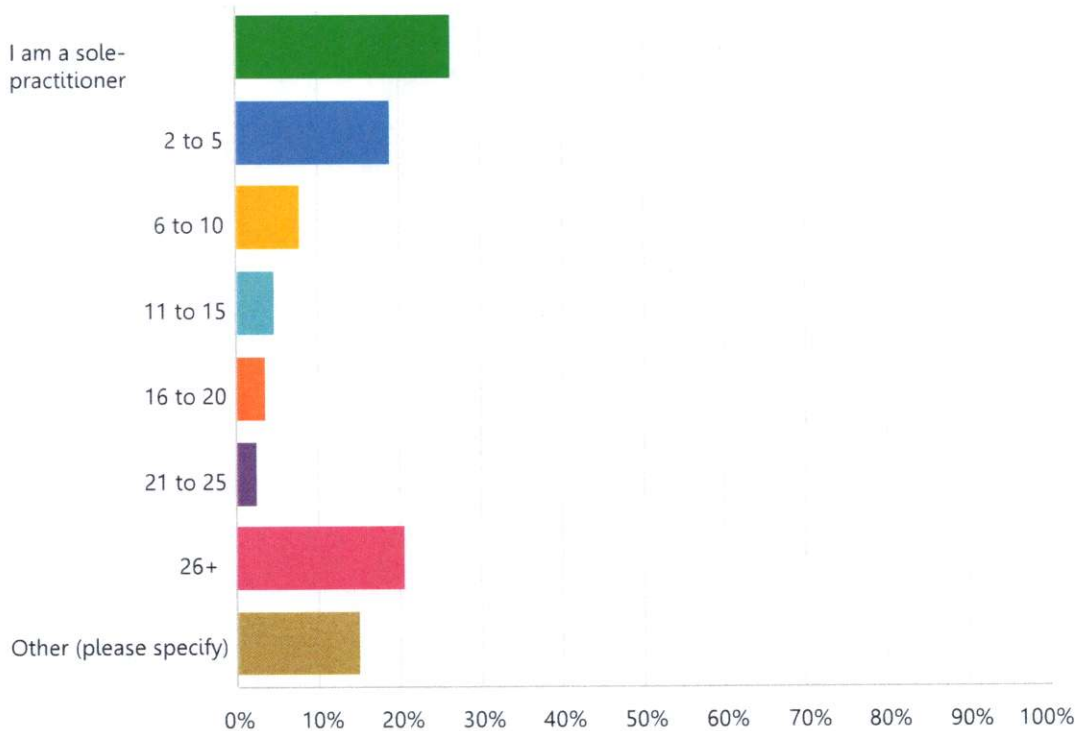
Respectfully Submitted,

A handwritten signature in blue ink that reads "Ryan M. Billings". The signature is written in a cursive, flowing style.

Ryan M. Billings  
President  
State Bar of Wisconsin

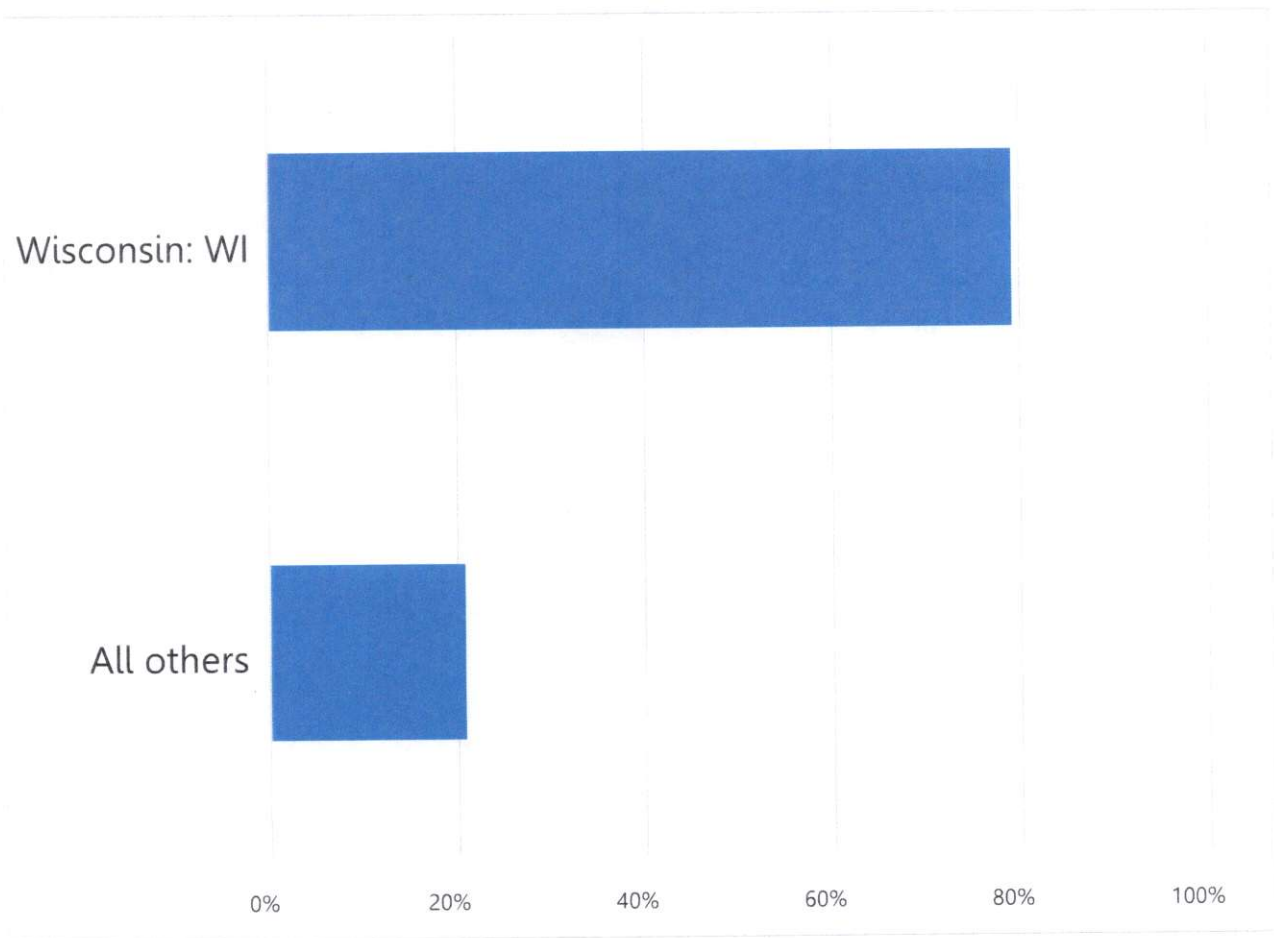
# Q1 What is the total number of lawyers employed by your firm or agency across all locations?

Answered: 3,047 Skipped: 16



ANSWER CHOICES	RESPONSES	
I am a sole-practitioner	26.42%	805
2 to 5	18.90%	576
6 to 10	7.98%	243
11 to 15	4.73%	144
16 to 20	3.64%	111
21 to 25	2.49%	76
26+	20.77%	633
Other (please specify)	15.06%	459
<b>TOTAL</b>		<b>3,047</b>

## Q2 In which state is your office located?

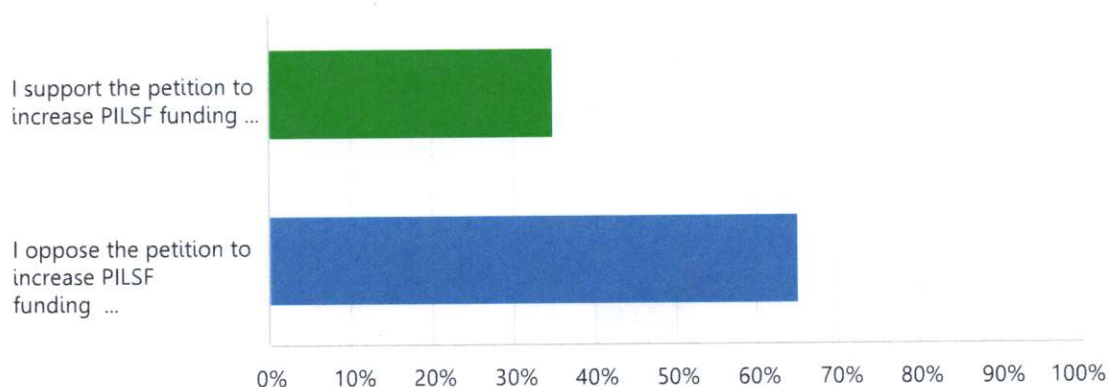


ANSWER CHOICES	RESPONSES	
All others	20.8%	638
Wisconsin: WI	79.2%	2425
TOTAL		3063



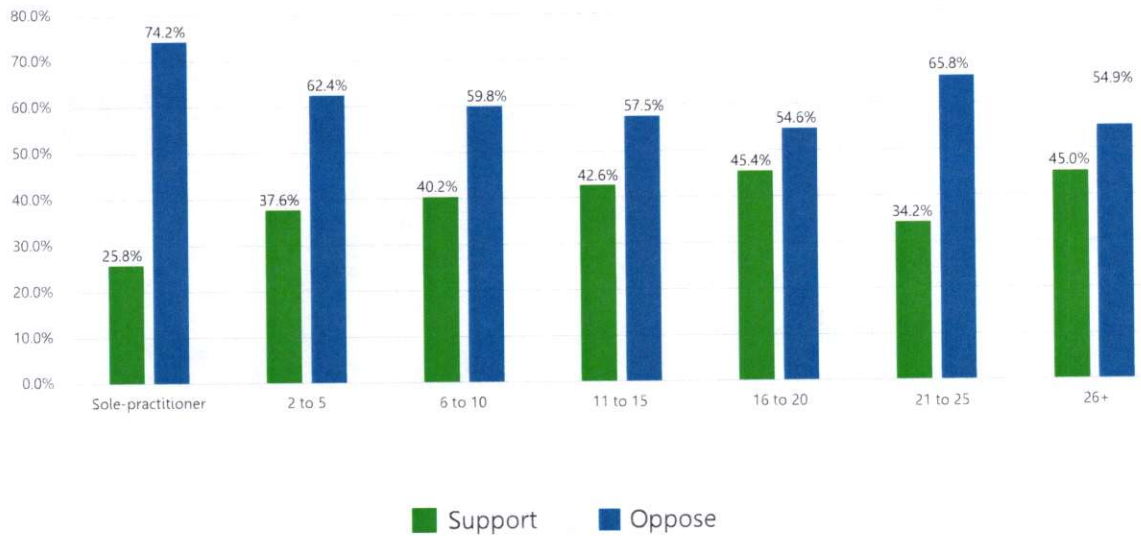
### Q3 Do you support or oppose the petition to increase the PILSF by \$50 [\$25 (to \$75 total) in 2025 and another \$25 (to \$100 total) in 2027 and thereafter] through an increased annual assessment paid by Wisconsin-licensed lawyers?

Answered: 3,002 Skipped: 61



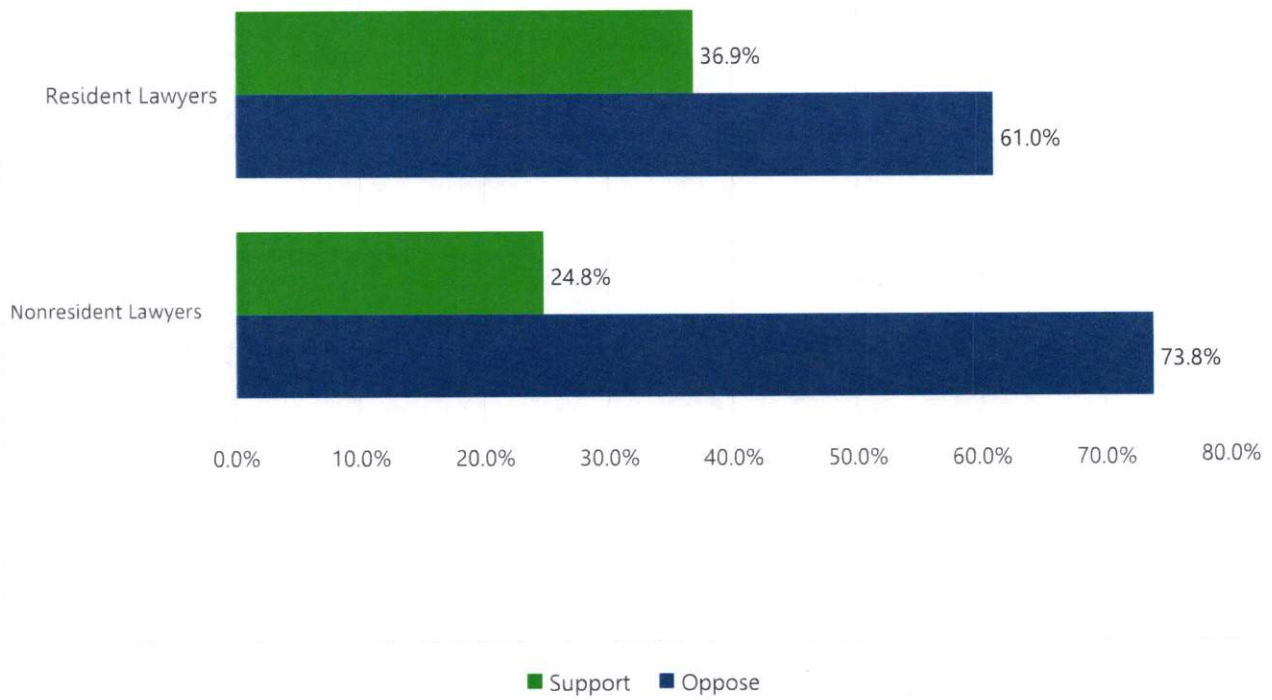
ANSWER CHOICES	RESPONSES	
I support the petition to increase PILSF funding by increasing the fee lawyers pay annually.	35.04%	1,052
I oppose the petition to increase PILSF funding by increasing the fee lawyers pay annually.	64.96%	1,950
TOTAL		3,002

## Support/Oppose by number of lawyers in firm across all locations



	<b>Support</b>	<b>Oppose</b>
Sole-practitioner	25.8%	74.2%
2 to 5	37.6%	62.4%
6 to 10	40.2%	59.8%
11 to 15	42.6%	57.5%
16 to 20	45.4%	54.6%
21 to 25	34.2%	65.8%
26+	45.0%	54.9%

# Support/Oppose by Location



	Nonresident Lawyers	Resident Lawyers
Oppose	73.8%	61.0%
Support	24.8%	36.9%

\*Please note percentages may not add to 100 due to skipped questions by participants