

STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

SEP 23 2010

FILED

C1-81-1206

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON  
PROPOSED AMENDMENTS TO THE RULES OF THE SUPREME COURT ON  
LAWYER REGISTRATION**

IT IS HEREBY ORDERED that a hearing be held before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on December 14, 2010 at 2:00 p.m., to consider the petition of the Board of Public Defense (BOPD) recommending amendments to Rule 2A of the Minnesota Rules of the Supreme Court on Lawyer Registration. The BOPD seeks to continue the \$75.00 per year increase of the lawyer registration fee and to allocate this additional money to the BOPD. A copy of the petition is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Dr. Rev. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, on or before November 24, 2010, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of the Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before November 24, 2010.

Dated: September 23, 2010

BY THE COURT:

  
Lorne S. Gildea  
Chief Justice

No.

**STATE OF MINNESOTA  
IN SUPREME COURT**

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In re:

Petition to Continue the Attorney Registration Fee  
to Provide Funding for Public Defense

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**PETITION OF BOARD OF PUBLIC DEFENSE**

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*Attorney for Petitioner*

No. \_\_\_\_\_

**STATE OF MINNESOTA**

**IN SUPREME COURT**

In re:

Proposed Amendment of Minnesota Rules on Lawyer Registration

**PETITION OF MINNESOTA BOARD OF PUBLIC DEFENSE**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME

COURT:

Petitioner Minnesota Board of Public Defense (“BOPD”) respectfully submits this petition asking this Honorable Court to continue the \$75 attorney registration fee charged to Minnesota lawyers and judges for an indefinite period and to allocate that additional money to the BOPD. This proposed change is intended to permit the BOPD to fund quality constitutionally mandated services to its clients. This change is proposed in response to this Honorable Court’s Order C1-81-1206.

In support of this petition, the BOPD would show that this Honorable Court has the exclusive power to regulate the legal profession, including the imposition of a Registration Fee on lawyers and judges; that the funding of the Board of Public Defense is an appropriate use of the revenue from this fee; and that the creation of a “public defender fund” with the revenue from the Registration Fee increase is necessary to the proper and efficient administration of justice.

**I. The Supreme Court is Empowered to Impose an Attorney Registration Fee to Provide for the Proper Administration of Justice.**

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1. This Honorable Court has exercised its exclusive and inherent power to regulate the legal profession in the interest of the public good and the efficient administration of justice. The Minnesota Legislature has expressly recognized this power. See Minn. Stat. §§ 480.05, 481.01 (2006).
2. This Honorable Court has recognized and exercised this authority. In its order C1-81-1206 imposing the fee, it was noted that the authority derives from the Court's inherent authority to regulate the practice of law. In 1961, the Court imposed a registration fee on lawyers to defray costs of the administration of the attorney licensure system. In subsequent years the fee has been increased, including increases directed toward civil legal services and public defense.
3. In the exercise of that power, this Court requires the annual payment of a Registration Fee by all licensed attorneys and judges in Minnesota. See Rules of the Supreme Court on Lawyer Registration 2 (A).
4. The Court has designated that a portion of the Registration Fee under C1-81-1206, in this case \$75, be placed in a special fund in the state treasury to be appropriated annually to the BOPD. See Attachment A.

**II. The Board of Public Defense is an Appropriate Recipient of Attorney Registration Fee Revenue.**

1. The Minnesota Board of Public Defense was created by statute to implement the constitutional right to counsel enunciated in *Gideon v. Wainwright*, 372 U.S. 335 (1963) and its progeny. See Minn. Stat. 611.215.
2. The mission of the Board of Public Defense is to provide quality criminal defense services to indigent defendants and juvenile respondents, in every county of Minnesota. See Minn. Stat. 611.14.
3. Public defenders employed by the BOPD represent indigent clients in approximately 170,000 cases each year. It is estimated that public defenders represent about 85% of persons accused of felonies in Minnesota, and about 95% of juveniles accused of acts of delinquency, among their other cases.
4. A public defender may not reject a case, but must accept all the clients assigned to her or him *Dziubak v. Mott*, 503 N.W.2<sup>nd</sup> 771 (Minn.1993.) This means that neither the BOPD, its Chief Public Defenders, nor the staff attorneys can control their caseloads.
5. A consequence of uncontrollable public defender caseloads is that frequently courtrooms- each with a presiding judge, court staff, prosecutors, probation officers, victim/witness assistants, victims, witnesses, family members and the public- are unable to conduct business in a timely manner because the public defenders needed for the resolution of cases are tied up elsewhere.

### **III. The Continuation of Revenue from a \$75 Attorney Registration Fee Increase Is Necessary to the Administration of Justice.**

As this Court noted in its original order on the public defender fee, fees like these are sometimes “necessary to maintain the integrity and efficiency of the judicial system,” and that the fees are “fully consistent with the heightened obligations of lawyers, both to our justice system and to assist this court with the effective administration of justice.” See generally, *In re Petition of the Wis. Trust Account Found.*, No. 04-05 at 5 (Wis. Mar. 24, 2005), available at <http://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=1>

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We understand that when the court imposed the public defender fee that it did so reluctantly and for a limited duration. We recognize that the imposition of a fee on the attorneys of this state to fund a constitutionally mandated service is not an ideal situation. We agree with Justice Anderson, Paul H., in his concurrence on C1-81-1206 that by “underfunding public defenders and leaving it up to our court to procure financial support from lawyers, the Governor and Legislature have failed to meet one of their fundamental responsibilities”. However, in its order establishing the fee Chief Justice Magnuson writing for the court noted that “We make this temporary fee increase reluctantly, in response to the exceptional financial circumstances currently facing the courts and the state in general”. Justice Anderson further noted in his concurrence that “Extraordinary circumstances have led to an under-resourced public-defense system that hinders

the administration of justice, and these circumstances prompt us to act today within our inherent power.” We would argue that those circumstances have not changed and in fact have gotten worse. Since the implementation of the fee, the budget for the BOPD has been further reduced. In the 2010 legislative session the budget for BOPD was reduced by \$591,000 in fiscal year 2010, and \$1,302,000 in fiscal year 2011. Overall, the number of full-time equivalent public defenders has been reduced 15% from 2007 levels.

The Board of Public Defense has set caseload standards, in compliance with Min. Stat. 611.215, subd. 2 (c ) (2). Following a weighted caseload study in 1991, the Board determined to adhere to caseload standards recognized by the A.B.A. since 1975, attempting to limit one year’s work for an attorney to:

- 150 felony cases, or
- 275 gross misdemeanor cases, or
- 400 misdemeanor cases, or
- 175 juvenile delinquency cases, or
- 80 CHIPS/TPR cases, or
- 200 other cases, or
- some proportional combined number of cases of these types.

To achieve proportionality the Board designated a misdemeanor as a “case unit” so that, for example, a felony would count as 2 and 2/3 “units.” Thus the Board/A.B.A. Standard would be 400 “units” of mixed caseload.

1. In FY 09, the budget shortfall led to the loss of 53 public defender positions statewide 12% of the attorney staff. (50 from Districts, 3 appellate.)

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2. In FY 09 the average caseload was 715 units, as of June 2010 the individual public defender average caseload is 758 units.
3. In FY10 the budget shortfall has led to the loss of an additional 15 public defender positions from May of 2009.
4. For the last two years Assistant Public Defender positions lost through layoff, retirements, or separations have not been able to be replaced. Cases assigned to these attorneys remain pending while new cases continue to be charged.
5. Chief District Public Defenders report that due to insufficient resources in approximately one-half of the counties in Minnesota clients go unrepresented at first appearance in out-of-custody misdemeanor cases.
6. Chief District Public Defenders report that due to insufficient resources in just under one-half of the counties in Minnesota clients are not represented by public defenders at first appearance.
7. Part-time assistant public defenders are required to work a set numbers of hours in order to qualify for state-funded benefits. In FY 09 the part-time assistant public defenders worked over and above these required numbers, 40,000 hours for which they were not compensated.
8. If the \$75 Registration Fee increase is not continued, this cut would necessitate a staff reduction of roughly 20-25 lawyers.

9. Besides the obvious detriment to indigent accused Minnesotans, and the obvious distress to public defender staff, there are several predictable hardships to the administration of justice which would result if the BOPD were required to take the full \$1.3 million cut and reduce staff accordingly:

- exacerbation of courtroom delays;
- inability to handle certain case types in anything like a timely manner;
- aggravation of jail overcrowding, which was reported as a statewide aggregate of 105% of capacity a year ago;
- postponement of trial settings, which are already far enough out to impinge on the right to a speedy trial;
- deterioration in the quality of fact-finding, as witnesses become unavailable; and
- increased strain on all the other participants in the justice system.

**IV. Failure to Extend the Public Defender Fee Will Have Dire Consequences on the Quality of Representation and the Continued Operation of the Criminal Justice System.**

In February of 2010 the Office of the Legislative Auditor (OLA) released a program evaluation of the public defense system in Minnesota. Among the OLA's findings:

- High public defender workloads have created significant challenges for Minnesota's criminal justice system;

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- Heavy workloads have hurt public defenders' ability to represent clients and court efficiency;
- 67% of public defenders responding to the OLA survey disagreed or strongly disagreed with the statement that they had "sufficient time with clients". Spending time with clients builds trust. Client trust is essential in providing quality representation and ensuring efficient resolution of cases. In the OLA surveys public defenders and judges said that when clients trust their attorneys, they can trust the attorney's advice to resolve the case, thereby leading to a more efficient disposition of the case.
- 60% of judges responding to the OLA survey disagreed or strongly disagreed with the statement that public defenders spent enough time with their clients.
- 42% of public defenders responding to the OLA survey disagreed or strongly disagreed that they were well prepared for each of their cases".
- 50% of district judges responding to the OLA survey indicated that criminal cases in their courtrooms progressed too slowly or much too slowly toward disposition. Judges and court administrators responding to the survey reported that "problems with scheduling public defenders for hearings and trials" was the most significant cause of delays.

- 72% of the judges responding to the survey cited difficulty in scheduling public defenders for hearings and trials as a moderate or significant cause of delays.
- During their site visits, OLA staff observed that due to time pressures public defenders often had about 10 minutes to meet each client for the first time to evaluate the case, explain the client's options and the consequences of a conviction or plea, discuss a possible deal with the prosecuting attorney, and allow the client to make a decision on how to proceed.

### **Conclusion**

To assist the Court in its consideration of this Petition, the BOPD submits with the Petition the following documents:

- a. A copy of State of Minnesota Supreme Court Order C1-81-1206.
- b. A copy of the BOPD biennial budget proposal.
- c. A copy of the 2010-2011 Activities Assessment Letter to Governor Pawlenty and Finance Commissioner Tom Hanson.
- d. A copy of the 2010 Legislative Audit Report-Public Defense

System.

Petitioner BOPD therefore respectfully requests that this Honorable Court grant its petition, to continue the increase in the Attorney Registration Fee of \$75.00, and to allocate the additional \$75.00 to the BOPD. The BOPD stands

ready to address any comments or questions the Court may have concerning the proposal in whatever forum may be most convenient to the Court.

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Dated: August 26, 2010

Respectfully submitted,  
BOARD OF PUBLIC DEFENSE

BY \_\_\_\_\_

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