

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8002 (formerly C9-81-1206)

OFFICE OF
APPELLATE COURTS

NOV 24 2010

FILED

**ORDER SETTING HEARING DATE AND DEADLINE
FOR SUBMITTING WRITTEN COMMENTS ON THE
PETITION OF THE LEGAL SERVICES PLANNING
COMMITTEE TO MAKE PERMANENT THE 2009
\$25 INCREASE IN LAWYER REGISTRATION FEES
ALLOCATED TO THE LEGAL SERVICES ADVISORY
COMMITTEE TO FUND CIVIL LEGAL SERVICES**

The Legal Services Planning Committee has filed a petition requesting the court to make permanent the temporary \$25 increase in lawyer registration fees allocated to the Legal Services Advisory Committee by our order filed November 4, 2009. A copy of the petition is annexed to this order.

IT IS HEREBY ORDERED THAT:

1. A hearing will be held before this court to consider the petition of the Legal Services Planning Committee in conjunction with the hearing previously scheduled for consideration of the petition of the Board of Public Defense to continue in effect the \$75 increase in lawyer registration fees allocated to the Board. The hearing will take place in Courtroom 300, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Boulevard, St. Paul, Minnesota, on December 14, 2010, commencing at 2:00 p.m.

2. Any person or organization desiring to make an oral presentation at the hearing in support of or in opposition to the petition of the Legal Services Planning Committee shall file a request to make an oral presentation, along with fourteen copies of

the material to be presented, with Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155. The request and written materials must be received by 12:00 noon on December 13, 2010.

3. Any person or organization desiring to provide only written comments in support of or in opposition to the petition shall file fourteen copies with Frederick K. Grittner, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155. Written comments must be received by 12:00 noon on December 13, 2010.

Dated: November 24, 2010

BY THE COURT:

A handwritten signature in cursive script, reading "Lori S. Gildea", is written over a horizontal line.

Lori S. Gildea
Chief Justice

No. ADM10-8002

NOV 17 2010

**STATE OF MINNESOTA
IN SUPREME COURT**

FILED

In re Petition to Amend the Rules of the Minnesota
Supreme Court on Lawyer Registration

PETITION OF LEGAL SERVICES PLANNING COMMITTEE

Legal Services Planning Committee

Peter Knapp, Chair (#151087)
William Mitchell College of Law
875 Summit Avenue
Saint Paul, MN 55105
(651) 290-6423

Dorsey & Whitney LLP

James K. Langdon (#0171931)
Britta Schnoor Loftus (#0388020)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
(612) 340-2600

Petitioner

*Attorneys for Petitioner
Legal Services Planning Committee*

No. _____

**STATE OF MINNESOTA
IN SUPREME COURT**

In re Petition to Amend the Rules of the Minnesota
Supreme Court on Lawyer Registration

PETITION OF LEGAL SERVICES PLANNING COMMITTEE

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Legal Services Planning Committee (the “Committee”) respectfully submits this petition seeking an extension to the temporary Order issued November 4, 2009, which increased the lawyer registration fee (“LRF”) by \$25.00 for every lawyer actively engaged in the practice of law and allocated those additional proceeds to the Legal Services Advisory Committee for distribution to civil legal services for low-income and disadvantaged Minnesotans.

In support of this petition, the Committee would show the following:

1. Petitioner Committee is a forum created by this Court to seek access to justice for low-income and disadvantaged persons throughout Minnesota who face significant barriers to meeting their civil legal needs.
2. In 1997, the Court, without dissent, amended the Rules of the Supreme Court for Registration of Attorneys to allocate \$50.00 to the Legal Services Advisory Committee for the support of civil legal services. *See Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206 (Feb. 5, 1997). This decision was prompted by a petition submitted by the Joint Legal Services Access and Funding Committee, which sought to

build stable long-term funding for civil legal services and argued that the allocation was necessary to meet the acute need for civil legal services for low income and disadvantaged Minnesotans. The 1997 Amendment received broad support from the Minnesota bar as a whole, with a diverse array of organizations signing on in support.¹

3. That support had not withered in 2009, when the Court ordered an increase to the amount of the annual lawyer registration fee by \$25.00 per year to be allocated to the Legal Services Advisory Committee for the support of civil legal services. *See* Order Temporarily Increasing Lawyer Registration Fees, C1-81-1206 (Nov. 4, 2009). The Court's decision was prompted by a petition submitted by the Legal Services Planning Committee, which argued that the increased allocation was necessary given the then even more acute need for civil legal services for low-income and disadvantaged Minnesotans. That petition noted that most of the requested increase would do no more than offset the erosion in the value of the existing \$50 fee adopted in 1997. The MSBA supported the petition without a sunset provision,² and there was no organized public dissent. In granting the Legal Services Planning Committee's petition, the Court combined its decision with its ruling on a petition filed on behalf of the Public Defense

¹ Supporters of the 1997 Amendments included the: Minnesota State Bar Association, Minnesota County Attorneys Association; Minnesota Trial Lawyers Association; Minnesota Defense Lawyers Association; Hennepin County Bar Association, New Lawyers Section; William Mitchell College of Law; University of Minnesota Law School; Hamline University School of Law; Minnesota Women Lawyers, Inc.; Corporate Counsel Association; Minnesota Justice Foundation; Minnesota Hispanic Bar Association; and Minnesota American Indian Bar Association.

² The MSBA resolution stated that the MSBA "A) believes that it is appropriate, given the unique current economic circumstances, for the Minnesota Supreme Court to increase the attorney registration fee by up to \$75 to fund, in part, the Board of Public Defense, and that this increase should sunset after a period of two years; and B) supports an increase in the attorney registration fee of \$25 to fund, in part, civil legal services."

system at the request of the Legislature. *Id.* at 4. The increase was only temporary, set to expire July 1, 2011. *Id.*

4. In granting the petition on behalf of civil legal services, the Court was not required to address any separation of powers concerns, there being no statutory or constitutional mandate for the Legislature to fund such civil legal services for disadvantaged litigants. *Cf.* Order Temporarily Increasing Lawyer Registration Fees, C1-81-1206 (Nov. 4, 2009), at C-1 (expressing “reluctance to fund a constitutional mandate” through an increase in the annual LRF) (Anderson, J., concurring). Instead, the Court noted the longstanding precedent for the existence and exercise of its authority to regulate, the overwhelming nature of the need, and the appropriateness of requiring active lawyers to support the efficient administration of, and equal access for all to, the judicial system in which they are licensed to practice. *Id.* at 4-6.

5. This existence of the Court’s authority to impose LRFs to ensure equal access for civil litigants to the judicial system and the efficient administration of that system is now beyond peradventure. *See* Petition of Legal Services Planning Committee, June 4, 2009, ¶¶ 7-9 (citing, among other authority, MINN. CONST. art. III, § 1 and art. VI, § 1; Minn. Stat. § 480.05). Indeed, the Court has never wavered from asserting its authority to impose fees. *See, e.g., Sharood v. Hatfield*, 210 N.W.2d 275, 280-81 (Minn. 1973) (power to control and regulate the practice of law—including the imposition of fees and the uses to which those fees are put—rests solely with the judiciary).

6. As the sunset on the increase to the LRF to support civil legal services approaches, the circumstances underlying the petition a year ago have not faded; if anything, they have intensified. The facts supporting the Court’s 2009 increase, unfortunately, are still true today. *See* Petition of Legal Services Planning Committee, June 4, 2009, ¶ 3 (citing studies

showing that almost half a million individuals in the state are living in poverty and that perhaps as much as 75% of the legal needs of the disadvantaged are not addressed). The percentage of unemployed Minnesotans remains at record levels,³ for example, and the State of Minnesota is facing a multi-billion dollar deficit.⁴ The need for stable, long-term funding for civil legal services, which the LRF increase can provide, is even more acute.

7. In these circumstances, continuing the increase in the LRF to support civil legal services is necessary to prevent further burdening of the court system as a whole and the concomitant inefficiencies that inevitably result. In granting the 2009 petition, the Court recognized as much: “fees like these are sometimes ‘necessary to maintain the integrity and efficiency of the judicial system.’” See Order Temporarily Increasing Lawyer Registration Fees, C1-81-1206 (Nov. 4, 2009), at 5 (quoting *In re Petition of the Wis. Trust Account Found.*, No. 04-05, at 5 (Wis. Mar. 24, 2005)); see also *id.* at 6 (“No one quarrels with the notion that civil legal services... are dramatically underfunded, and that as a result, our court system as a whole is suffering.”). The Court has long recognized the correlation between the administration of justice and the provision of legal services to the disadvantaged. In *In re Petition for Integration of Bar of Minnesota*, 12 N.W.2d 516 (Minn. 1943), for example, although the Court deferred the integration issue until war’s end, it discussed its inherent power to regulate the practice of law. The Court noted the assertion by petitioners that the requested order would:

³ See U.S. Department of Labor, Bureau of Labor Statistics, *Local Area Unemployment Statistics* (data extracted Nov. 15, 2010), available at <http://www.bls.gov/lau/home.htm> (follow link to Minnesota Historical Data and adjust date range to 1980-2010) (showing unemployment rates from January 2009 through September 2010 ranging from 7.2% to 8.4%, the highest in over 25 years).

⁴ See, e.g., Tom Scheck, *Budget Fixed for Now, But Could Get Worse*, MINNESOTA PUBLIC RADIO NEWS, May 17, 2010 (“Without deeper permanent spending cuts or permanent tax increases, the next two-year budget cycle—for 2011-2013—is already showing a projected deficit of close to \$5.8 billion.”), available at <http://minnesota.publicradio.org/display/web/2010/05/17/budget-fofo/>.

afford protection and recourse to those who might otherwise by reason of destitute circumstances be unable to protect their legal or constitutional rights. If such results would follow, then unquestionably the order prayed for would result in the furtherance of the administration of justice, and be well within the province of the court.

Id. at 518.

8. Quite recently members of the judiciary have noted the increasing impact of self-represented litigants on the efficiency of the judicial system. *See* LINDA KLEIN, ABA COALITION FOR JUSTICE, REPORT ON THE SURVEY OF JUDGES ON THE IMPACT OF THE ECONOMIC DOWNTURN ON REPRESENTATION IN THE COURTS (PRELIMINARY) (2010), *available at* <http://new.abanet.org/JusticeCenter/PublicDocuments/CoalitionforJusticeSurveyReport.pdf>. In a word, the impact is negative: self-represented litigants use more court and staff time and slow down the pace of a case. *Id.* at 4. Members of the bar have articulated such concerns for years. *See, e.g.*, MSBA PRO SE IMPLEMENTATION COMMITTEE, 2001-2002 ANNUAL REPORT, *available at* <http://www.mnbar.org/committees/pro-se/annual-reports.asp> (the lack of familiarity with laws and procedures places strain on efficiency and efficacy of judicial system).

9. Indeed, if the increase in the LRF to support civil legal services is not extended, the burden on the judicial system, and the resulting negative impact on efficiency, is likely to become heavier. The legal fees allocated by the Legal Services Advisory Committee help to provide legal assistance that increases the efficient administration of, and decreases the burden on, the judicial system. As a result of civil legal assistance services, legal aid attorneys are able to help their clients resolve disputes prior to substantial involvement from the courts. In many instances, these attorneys help clients to understand that their claims lack merit and should not be brought at all. In other instances, they facilitate early voluntary resolutions. In fact, the majority of cases in which legal aid is involved are resolved prior to trial. *See* Scott Russell, *Minnesota's Legal Safety Net: Many Hands Intertwined*, 66 BENCH & B. MINN. 22 (2009), *available at*

http://www.mnbar.org/benchandbar/2009/mar09/legal_aid.html (noting Minnesota Legal Services Coalition estimates that it helps “more than 3,000 cases settle pretrial or out of court, or screening them out for lack of merit”). In contrast, cases proceeding with pro se litigants tend to place a much greater burden on the system. *Id.* The incidence of domestic violence cases involving unrepresented litigants is but one example. See Amy Farmer & Jill Tiefenthaler, *Explaining the Decline in Domestic Violence*, 21 CONTEMP. ECON. POL’Y ISSUES 158 (2003).

10. Civil legal service programs often work directly with the court system as the system struggles to deal with the growing number of unrepresented litigants. Efforts such as the Self-Help Center and the Housing Court Project in the Fourth Judicial District involve civil legal services staff and volunteer lawyers working with the courts to help people negotiate the system even without full representation by counsel. Similar efforts are underway in the other districts. Such efforts improve the efficiency of the courts and the quality of justice provided. As a result, in addition to direct assistance to clients, civil legal service organizations also provide a vital service to the judicial system as a whole. Were the civil legal services organizations unable to continue to serve as many clients as they do, the burdens on the judicial system would increase—likely dramatically.

11. The efficient administration of the judicial system depends on public confidence in that system. This Court has a substantial interest in engendering such trust. Unfortunately, at the same time that low-income and disadvantaged persons increase the burden on, and reduce the efficient administration of, the judicial system, they also tend to lack trust in the system. A 2007 study conducted by the Minnesota Judicial Branch, for example, found that the level of confidence in the courts was lower among traditionally disadvantaged groups, including renters, high school or less well-educated, members of households earning less than \$35,000 yearly, and

persons of color. *See* MINNESOTA JUDICIAL BRANCH, THE MINNESOTA DIFFERENCE: THE MINNESOTA COURT SYSTEM AND THE PUBLIC 6 (Decisions Resources, Ltd., 2007). Similarly, when respondents were asked whether each of six groups is treated fairly by the courts, over 90% of people agreed that Caucasian people, middle class people, and wealthy people are treated fairly, whereas less than 60% agreed that people of color, non-English speaking people, and poor people were treated fairly. *Id.* at 8. And, while 52% of people agreed that “court cases are resolved in a timely manner,” disagreement increased among respondents with high school educations or less and persons of color. *Id.* at 10. Simply stated, those groups most likely to be in need of civil legal services, and who have the least access to those services because of inadequate funding, are also those who are already feeling a lack of confidence in the judicial system. A further decrease in the availability of these services will serve only to exacerbate that lack of trust.

12. There can be no doubt that the availability of civil legal services is already suffering. Although the number of people in poverty increases when the economy goes down, increasing the need for civil legal services, the capacity of legal aid and pro bono programs to meet that need declines due to increased costs (such as health insurance) and declining funding. For example, the Legal Services Advisory Committee, which funds roughly one-third of civil legal services, had its state appropriation reduced in July 2009 by \$1.1 million per year. This cut translates to approximately 2600 fewer families per year being able to obtain legal services. Interest on Lawyers’ Trust Accounts (“IOLTA”) revenue, which is another major source of funding for civil legal services, has dropped from \$3,800,000 to about \$600,000. This translates into thousands more families that will not have access to legal assistance. Finally, the Volunteer Lawyer Network and the Volunteer Attorney Program in Duluth, the only free-standing

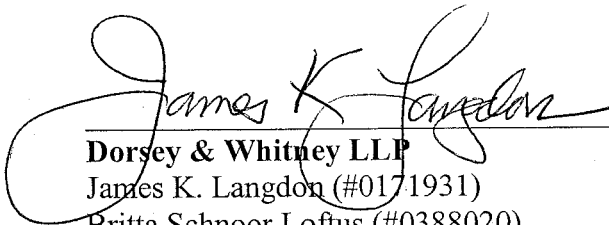
volunteer attorney programs, are running at bare minimum: they have eliminated staff positions and taken numerous cost-cutting measures, such as freezing projects, serving fewer clients, and restricting the extent of the representation by in many cases providing only advice instead of full representation. Given the state of the economy, there is no realistic expectation that any of these existing resources will rebound in the near future.

13. Inflation also has affected civil legal services. According to the Consumer Price Index inflation calculator, the \$50.00 fee instituted in 1997 would need to be \$68.05 to have the same buying power in 2010. See U.S. Department of Labor: Bureau of Labor Statistics, *CPI Inflation Calculator*, available at http://www.bls.gov/data/inflation_calculator.htm (last visited Nov. 15, 2010). In other words, even were financial circumstances the same as they were in 1997—which they clearly are not—the cost of living has increased by approximately 36% since 1997. The 2009 LRF increase, accordingly, barely covers inflation.

14. Minnesota lawyers have a professional responsibility to ensure access to justice. See Minn. R. Prof. Conduct, pmbl., ¶ [1] (Oct. 1, 2005); Minn. R. Prof. Conduct 6.1, cmt. [10]; Minn. R. Prof. Conduct, 6.1. In 2009 the Court recognized that “it was appropriate to require lawyers to pay that fee as part of the price of licensure,” and, “in fact, there [wa]s probably greater justification” for the increase in 2009 than there had been in 1997. See Order Temporarily Increasing Lawyer Registration Fees, C1-81-1206 (Nov. 4, 2009), at 4. The justification for continuing the increased LRF to support civil legal services is undoubtedly still greater today—and it shows no signs of diminishing. As a result, to ensure the *continued* efficient administration of the judicial system, the Court should make the “temporary” civil legal services increase permanent.

For the foregoing reasons, the Committee respectfully requests that the Court make permanent the \$25.00 increase in LRFs allocated to the Legal Services Advisory Committee.

Dated: November 17, 2010

A handwritten signature in black ink that reads "James K. Langdon". The signature is written in a cursive style with a large, looping initial "J".

Dorsey & Whitney LLP

James K. Langdon (#0171931)

Britta Schnoor Loftus (#0388020)

50 South Sixth Street, Suite 1500

Minneapolis, MN 55402-1498

(612) 340-2600

Attorneys for Petitioner

Legal Services Planning Committee