

No. C 9-81-1206

**STATE OF MINNESOTA
IN SUPREME COURT**

OFFICE OF
APPELLATE COURTS

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

PETITION OF LEGAL SERVICES PLANNING COMMITTEE

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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 amendment to Rule 2A of the Minnesota Rules of the Supreme Court on Lawyer Registration. The Committee requests an increase in the lawyer registration fee (“LRF”) by \$25.00 for every lawyer actively engaged in the practice of law, and an allocation of 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 amended the Rules of the Supreme Court for Registration of Attorneys to allocate \$50.00 to the Legal Services Advisory Committee. *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 argued that the allocation was necessary to meet the acute need for civil legal services for low income and disadvantaged Minnesotans.

3. Today, the unmet need is even greater. The U.S. Census Bureau estimates that almost half a million individuals in the state are living in poverty. *See* U.S. Census Bureau, 2007 Poverty and Median Income Estimates, <http://www.census.gov/did/www/saipe/data/statecounty/data/2007.html> (last visited May 29, 2009). At the most basic level, these families and individuals need legal assistance for critical matters such as child custody, health, housing issues, sustenance and personal safety. Studies suggest that perhaps as much as 75% of the legal needs of the disadvantaged are not addressed. *See* Minnesota Legal Services Planning Commission Drafting Committee, *Recommendations of the Minnesota Legal Services Planning Commission on the Configuration of the LSC-Funded Programs*, 26 HAMLINE J. PUB. L. & POL'Y 265, 282 (Spring 2005). In 2009, the American Bar Association released a report on pro bono legal services, in which it recognized that the bar needs to do more to support volunteer legal services and the individuals of limited means they serve. American Bar Association, *Supporting Justice II: A Report on the Pro Bono Work of America's Lawyers*, Feb. 2009, <http://www.abanet.org/legalservices/probono/report2.pdf> (last visited June 2, 2009). The Legal Services Corporation also has studied the unmet need for civil legal services in the U.S. and discovered that “only a very small percentage of the civil legal problems experienced by low income people (one in five or less) are addressed with the assistance of either a private (pro bono or paid) or a legal aid lawyer.” Legal Services Corporation, *Documenting the Justice Gap In America*, June 2007 (2d ed.), <http://www.lsc.gov/justicegap.pdf> (last visited June 2, 2009). The report goes on to suggest that these figures probably understate the actual current need. *Id.* at 14. With the lowest salaries

and the highest unmet need, civil legal services are the most under-funded piece of the justice system.

4. Legal services are countercyclical—the need goes up when the economy, and therefore resources, goes down. The capacity of legal aid and pro bono programs to meet that need is declining due to increased costs (such as health insurance), combined with stagnant and declining funding. The Legal Services Advisory Committee funds roughly one-third of civil legal services. However, effective July 1, 2009, its state appropriations will be reduced by \$1.1 million per year. This loss means that approximately 2600 fewer families per year will be able to obtain legal services. Interest on Lawyers' Trust Accounts ("IOLTA") revenues have dropped nearly 75% from just two years ago, and IOLTA funding was recently cut, translating into an additional 1,000 families that will not have access to legal assistance. The Lawyers Trust Account Board announced that they will be cutting grants by at least \$500,000 this month. Finally, the Volunteer Lawyer Network, the Volunteer Attorney Program in Duluth, and other free-standing volunteer attorney programs are running at bare minimum: they have eliminated staff positions and taken numerous cost-cutting measures. Given the state of the economy, there is no realistic expectation that existing resources will rebound in the near future.

5. 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 \$66.43 to have the same buying power in 2009. *See* United States Department of Labor: Bureau of Labor Statistics, *CPI Inflation Calculator*, http://www.bls.gov/data/inflation_calculator.htm (last visited June 1, 2009). In other words, the cost of living has increased by approximately 33% since 1997.

6. In response to these growing needs and shrinking resources, the Committee respectfully petitions this Court to increase the LRF by \$25.00 for every lawyer actively engaged in the practice of law.

7. Pursuant to the Constitution of the State of Minnesota, this Court has the exclusive power to regulate the bar. See MINN. CONST. art. III, § 1 and art. VI, § 1. *Sharood v. Hatfield*, 210 N.W.2d 275 (1973) (“[T]he power to make the necessary rules and regulations governing the bar was intended to be vested exclusively in the supreme court” (quoting *In re Petition for Integration for the Bar of Minnesota*, 12 N.W.2d 515, 516 (1943))); *Minneapolis Star & Tribune Co. v. Housing & Redevelopment Auth.*, 251 N.W.2d 620, 623 (1976) (“This court is empowered by Article 3, § 1, of the 1974 Minnesota Constitution to administer, among other areas, the practice of law.”).

8. This exclusive authority includes the power to supervise lawyers and to regulate bar admission requirements. See Minn. Stat. § 480.05 (“The Supreme Court . . . shall prescribe, and from time to time may amend and modify . . . rules governing the examination and admission to practice of attorneys at law and rules governing their conduct in the practice of their profession”); accord *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 755 (1992) (“Under Article 3, Section 1 of the Minnesota Constitution, this power [to decide who may properly practice law before the courts of this state] is vested solely in the judiciary.” (citation omitted)); *In re Daly*, 189 N.W.2d 176, 179 (1971) (“The ultimate determination governing admission, supervision, and discipline of attorneys in this state . . . is vested in this court.” (citation omitted)). Accordingly, the Constitution, statutory law, and case law all support the Court’s authority to increase the LRF to provide additional funding for legal services.

9. The Court repeatedly has exercised its power to determine the amount and use of LRF by amending the Rules of the Supreme Court for Registration of Attorneys. *See Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206 (June 17, 2003) (reallocating funds from the State Board of Continuing Legal Education to the Lawyers Professional Responsibility Board); *Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206 (May 8, 2000) (reducing allocations of LRFs to the State Board of Law Examiners and the Lawyers Professional Responsibility Board); *Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206, C8-84-1650, C4-91-1728 (Apr. 18, 2000) (increasing the LRF to allocate funds to the Lawyer Trust Account Board for a lawyers assistance program); *Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206, C0-85-2205, C2-84-2163 (May 22, 1998) (revoking a temporary reallocation of LRFs from the Client Security Fund to the Board of Continuing Legal Education). Specifically, the Court previously has exercised its power to increase LRFs in order to allocate funds for legal services. *See Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, C9-81-1206 (Feb. 5, 1997) (increasing LRF to allocate fifty dollars for the Legal Services Advisory Committee).¹ Accordingly, precedent demonstrates that the Court has the power to increase LRFs to allocate funding for legal services.

10. Funding civil legal services through an increase in LRFs would help to ensure the protection of constitutionally guaranteed rights. The Minnesota Constitution recognizes that

¹ The new increase of \$25 will make for a total of \$75 per attorney to sustain civil legal assistance, a figure which appropriately matches the amount currently sought by the State of Minnesota Board of Public Defense.

every person is entitled to a legal remedy for wrongs inflicted and that every person is entitled to access justice:

REDRESS OF INJURIES OR WRONGS. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

MINN. CONST. art. I, § 8. By providing assistance to help disadvantaged Minnesotans navigate the legal system and understand the laws, legal services providers help to guarantee that every person is afforded these rights. An increase in LRFs would help civil legal services providers guarantee every person access to justice.

11. Funding civil legal services through an increase in LRFs is also appropriate because lawyers have a special obligation to ensure access to justice. The Minnesota Rules of Professional Conduct provide that a lawyer is “a public citizen having *special responsibility* for the quality of justice.” Minn. R. Prof. Conduct, pmb1., ¶ [1] (Oct. 1, 2005) (emphasis added). The Rules also provide that lawyers have an obligation to seek access to the legal system, including furthering the public’s understanding of the law and legal system and devoting time and resources to ensure access to justice:

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. . . . [A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these

objectives and should help the bar regulate itself in the public interest.

Minn. R. Prof. Conduct, pmb1., ¶ [6]; *accord* Minn. R. Prof. Conduct 6.1 (“Every lawyer has a professional responsibility to provide legal services to those unable to pay . . .”). The Rules provide that “in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible,” lawyers “should financially support” programs instituted by the government and the profession “to meet the need for free legal services.” Minn. R. Prof. Conduct 6.1, cmt. [10]; *see also* Minn. R. Prof. Conduct, 6.1 (“[A] lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.”). Although all citizens have an obligation to uphold the law, lawyers have a special, professional responsibility to ensure access to justice. Accordingly, funding civil legal services through an increase in LRFs is an appropriate means by which to ensure continued access to justice throughout the State of Minnesota.²

12. Indeed, it is reasonable to require lawyers to provide this financial support to civil legal services for low income and disadvantaged persons. Lawyers are given a monopoly by the Court on the practice of law. This monopoly carries with it a responsibility to make sure that all citizens, including the approximately 15% of the population with insufficient resources, have access to justice. Furthermore, the majority of Minnesota attorneys have the ability to absorb

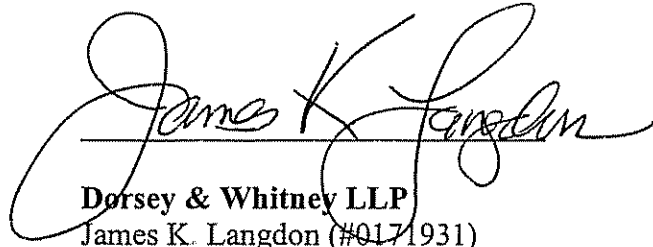
² In addition to Minnesota, other states have used LRF to provide funding for legal services. *See, e.g.,* New York State Unified Court System, *Attorney Registration: Registration FAQ*, Mar. 12, 2008, <http://www.nycourts.gov/attorneys/registration/faqs.shtml#q1> (last visited May 31, 2009) (providing that—pursuant to Section 468-a of the Judiciary Law and 22 NYCRR Part 118 of the Rules of the Chief Administrator of the Courts—\$50.00 of the \$350.00 LRF be deposited in the Indigent Legal Services Fund); State Bar of Texas, *\$65 Legal Services Fee and Voluntary ATJ Contribution: Frequently Asked Questions*, http://www.texasbar.com/Template.cfm?Section=For_Attorneys&Template=/ContentManagement/ContentDisplay.cfm&ContentID=11498 (last visited May 31, 2009) (providing that—pursuant to the State Bar Act, § 81.054—\$65.00 of the LRF be designated to civil legal aid and indigent criminal defense).

this \$0.48 per week increase in the cost of doing business.³ Even with the proposed increases, Minnesota's LRF still would be comparable to the nationwide average. *See* Administrative Office of Pennsylvania Courts, *News Release: Annual Registration Fee for Lawyers to Increase*, Apr. 2, 2009, *available at* <http://www.aopc.org/NR/rdonlyres/7753FE41-9923-447A-82C8-2D8BFC282686/0/prrel09402.pdf> (last visited June 2, 2009) (noting that the national average attorney registration fee is over \$300).

For the foregoing reasons, the Committee respectfully requests that the Court amend the Rules on Registration of Attorneys to increase the allocation to the Legal Services Advisory Committee by \$25.00.

³ The Minnesota State Bar Association ("MSBA") intends to discuss this issue at its upcoming convention. Currently, the MSBA does not oppose the legislative determination that this Court should impose a \$75 charge on the LRF to help fund public defense. The MSBA did not oppose the increase because, among other reasons, it viewed the charge as necessary and as an alternative to the threatened sales tax on legal services.

Dated: June 4, 2009

A handwritten signature in black ink that reads "James K. Langdon". The signature is written in a cursive style with large, flowing loops. A horizontal line is drawn across the signature, positioned just above the typed text below.

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