

STATE OF MINNESOTA

IN SUPREME COURT

C1-81-1206

OFFICE OF
APPELLATE COURTS

JUN 11 2009

FILED

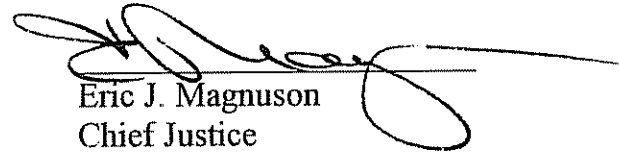
**ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS
ON PROPOSED AMENDMENTS TO THE RULES OF THE SUPREME
COURT ON LAWYER REGISTRATION**

The Board of Public Defense (BOPD) and the Legal Services Planning Committee (LSPC) have filed petitions with this court recommending amendments to the Rule 2A of the Minnesota Rules of the Supreme Court on Lawyer Registration. The BOPD seeks to increase the lawyer registration fee by \$75.00 per year and to allocate this additional money to the BOPD to help fund constitutionally mandated services to its clients. The LSPC seeks to increase the lawyer registration fee by \$25.00 per year to raise the amount allocated to the Legal Services Advisory Committee (LSAC) from \$50.00 to \$75.00 per year. The LSAC distributes these funds for civil legal services for low income and disadvantaged Minnesotans. This court will consider the proposed amendments without a hearing after soliciting and reviewing comments on the petition. Copies of the petitions are annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed amendment shall submit twelve copies in writing addressed to Frederick K. Grittner, Clerk of Appellate Courts, 25 Dr. Rev. Martin Luther King Jr. Blvd, St. Paul, Minnesota 55155, no later than July 13, 2009.

Dated: June 11, 2009

BY THE COURT:



Eric J. Magnuson
Chief Justice



**STATE OF MINNESOTA
STATE PUBLIC DEFENDER**

John M. Stuart
State Public Defender

331 Second Avenue South
Suite 900
Minneapolis, MN 55401

OFFICE OF
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h MAY 27 2009
FILED
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john.stuart@pubdef.state.mn.us

May 27, 2009

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St Paul, MN 55155

RE: Petition of the Board of Public Defense

Dear Mr. Grittner:

Accompanying this letter is the Board's petition for an increase in the Registration Fee, with attachments, one original and 11 copies. Thank you for your assistance. Please call if we need to submit anything further.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stuart", with a long horizontal line extending to the right.

John Stuart
Attorney for Petitioner

No.

STATE OF MINNESOTA
IN SUPREME COURT

—————
C 9-81-1206

OFFICE OF
APPELLATE COURTS

MAY 27 2009

FILED

In re:

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

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PETITION OF BOARD OF PUBLIC DEFENSE
—————

Board of Public Defense

John Stuart, State Public Defender
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Board of Public Defense

Kevin Kajer, Chief Administrator
331 Second Ave. S.
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(612) 349-2565

Attorney for Petitioner

No. C 9-81-1206

**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 increase the attorney registration fee charged to Minnesota lawyers and judges by \$75.00 per year 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 authorization by the Minnesota Legislature, in Laws 2009, Chapter 83, Article 2, Section 49. See Attachment A for the text of this authorizing law.

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.

1. This Honorable Court has and exercises the 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. 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).
3. The Court may designate that a portion of the Registration Fee, 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.

4. 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.

5. 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.
6. Public defenders employed by the BOPD represent indigent clients in approximately 170,00 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.
7. 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.2nd 771 (Minn.1993.) This means that neither the BOPD, its Chief Public Defenders, or the staff attorneys can control their caseloads.
8. 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 Creation of a Public Defender Fund with the Revenue from a \$75 Attorney Registration Fee Increase Is Necessary to the Administration of Justice.

9. 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.

10. In FY09, the budget shortfall led to the loss of 53 public defender positions statewide, 12% of the attorney staff. (50 from Districts, 3 appellate.)
11. In FY 09, the individual public defender average caseload was 715 units.

12. Part-time assistant public defenders are required to work 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, 44,000 hours for which they were not compensated.
13. In the 2009 Legislative Session the BOPD's budget was reduced by \$2 million per year, from a base of \$68 million.
14. If it were not partially offset by the proposed \$75 Registration Fee increase, this cut would necessitate a staff reduction of roughly 35 lawyers

If it were not partially offset by the proposed \$75 Registration Fee increase, the staff reduction based on the \$2 million cut would lead to individual average public defender caseloads over 800 case units, more than double the Board/A.B.A. Standard.
15. Even with the projected revenue from the proposed Registration Fee increase, the BOPD will lose 10 lawyer positions and the average individual caseload will grow from 715 units to 743.

16. 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 \$ 2 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.

Conclusion

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

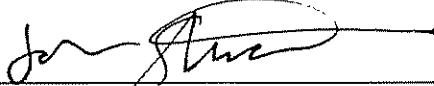
- a. Minnesota Laws, 2009, Chapter 83, Article 2, Section 49.
- b. A copy of the BOPD biennial budget proposal.

- c. A copy of the 2010-2011 Activities Assessment Letter to Governor Pawlenty and Finance Commissioner Tom Hanson.
- d. A copy of the 2009 BOPD Budget Presentation to the House Public Safety Finance Division

Petitioner BOPD therefore respectfully requests that this Honorable Court grant its petition, increase the Attorney Registration Fee by \$75.00, and allocate that 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.

Dated: May 21, 2009

Respectfully submitted,
BOARD OF PUBLIC DEFENSE

BY 

John Stuart
Attorney for Petitioner, #0106756
State Public Defender
331 Second Avenue. S. Suite 900
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(612) 349-2563

And

BY 

Kevin Kajer
Chief Administrator,
Board of Public Defense
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Minnesota Session Laws

2009 Regular Session

CHAPTER 83--S.F.No. 802

Sec. 49. **PUBLIC DEFENDER FEE.**

Subdivision 1. **Authorization.** (a) The Supreme Court, through the lawyer registration office, may assess a public defender fee on each licensed attorney in the state. If imposed, the fee must not be more than \$75 or less than the civil legal service fee established by the Supreme Court in 1997 that licensed attorneys are required to pay pursuant to the rules of the supreme court on lawyer registration.

(b) The fee described in paragraph (a) may apply only to attorneys actively engaged in the practice of law.

Subd. 2. **Creation of account.** The public defender fee account is created in the special revenue fund. The state court administrator shall forward fees collected under subdivision 1 to the commissioner of finance who shall deposit them in the state treasury and credit them to this account. Money in the account is appropriated to the Board of Public Defense.

Agency Purpose

The Board of Public Defense is a judicial branch agency whose purpose is to provide quality criminal defense services to indigent defendants in the state of Minnesota through a cost-effective and efficient public defender system. Throughout its history the Board has established goals and principles to aid the agency to carry out its mission. Overall the Board is committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and being a full partner in the justice system.

The public defense system is the largest customer of the courts, and public defenders provide service in every courthouse in Minnesota, handling over 179,000 cases per year.

Core Functions

The Judicial District Public Defender Offices provide quality trial court criminal defense services to indigent clients charged with crimes in felony, gross misdemeanor, misdemeanor, and juvenile cases. The Appellate Office provides services to indigent clients who appeal their convictions; post conviction proceedings; individuals subject to supervised release/parole revocations; and individuals subject to community notification hearings.

Operations

The ten Judicial District Public Defender Offices provide quality criminal defense services to indigent persons in felonies, gross misdemeanors, misdemeanors, juvenile delinquency, and children over ten years of age in Children In Need of Protective Services (CHIPS) cases. This is accomplished through a system that relies heavily on part-time attorneys (50%). During FY 2007 the districts provided service for 179,000 cases. This program also includes partial funding for four nonprofit public defense corporations. The corporations provide high quality, independent criminal, and juvenile defense services primarily to minority indigents, who otherwise would need public defense services. The four corporations are the Neighborhood Justice Corporation (St. Paul); Legal Rights Center (Minneapolis), Duluth Indian Legal, and the Regional Native Public Defense Corporation which serves the communities of Leech Lake and White Earth Reservations.

The Appellate Office provides services to indigent clients in state prisons who appeal their criminal cases to the Minnesota Court of Appeals and Supreme Court; or who pursue post conviction proceedings in the District Courts throughout the state; defendants in supervised release/parole revocation proceedings, and individuals subject to community notification.

Budget

During FY 2008-2009 the agency budget totals \$134 million. The entire agency is funded through the General Fund.

At A Glance**Two Year State Budget:**

- ◆ \$134 million - General Fund

Annual Caseloads

- ◆ 179,000 District Public Defense Cases
- ◆ 3,356 Parole Revocation Hearings
- ◆ 841 Appellate Files Opened
- ◆ 709 Community Notification Hearings

Contact

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Kevin Kajer, Chief Administrator
Phone: (612) 349-2565
Fax: (612) 349-2568

Dollars in Thousands

| | Current | | Forecast Base | | Biennium 2010-11 |
|---|---------------|---------------|---------------|---------------|---------------------|
| | FY2008 | FY2009 | FY2010 | FY2011 | |
| <u>Direct Appropriations by Fund</u> | | | | | |
| General | | | | | |
| Current Appropriation | 66,348 | 68,028 | 68,028 | 68,028 | 136,056 |
| Forecast Base | 66,348 | 68,028 | 68,028 | 68,028 | 136,056 |
| Change | | 0 | 0 | 0 | 0 |
| % Biennial Change from 2008-09 | | | | | 1.3% |
| <u>Expenditures by Fund</u> | | | | | |
| Carry Forward | | | | | |
| Miscellaneous Special Revenue | 47 | 0 | 0 | 0 | 0 |
| Direct Appropriations | | | | | |
| General | 66,061 | 68,315 | 68,028 | 68,028 | 136,056 |
| Statutory Appropriations | | | | | |
| General | 600 | 565 | 450 | 450 | 900 |
| Gift | 167 | 221 | 180 | 180 | 360 |
| Total | 66,875 | 69,101 | 68,658 | 68,658 | 137,316 |
| <u>Expenditures by Category</u> | | | | | |
| Total Compensation | 47,884 | 45,305 | 44,755 | 44,730 | 89,485 |
| Other Operating Expenses | 5,890 | 10,353 | 10,460 | 10,485 | 20,945 |
| Local Assistance | 13,101 | 13,443 | 13,443 | 13,443 | 26,886 |
| Total | 66,875 | 69,101 | 68,658 | 68,658 | 137,316 |
| <u>Expenditures by Program</u> | | | | | |
| Appellate Office | 4,528 | 4,627 | 4,603 | 4,603 | 9,206 |
| Administrative Services Office | 1,639 | 2,071 | 2,052 | 2,052 | 4,104 |
| District Public Defense | 60,708 | 62,403 | 62,003 | 62,003 | 124,006 |
| Total | 66,875 | 69,101 | 68,658 | 68,658 | 137,316 |
| Full-Time Equivalent (FTE) | 640.1 | 527.5 | 527.5 | 512.5 | |

Program Description

The Appellate Office provides services to indigent clients in criminal appeals, post conviction proceedings in the District Courts, sex offender community notification and review hearings, and supervised release/parole revocation proceedings.

Program at a Glance

- ◆ 948 Appellate cases opened in FY 2007
- ◆ 3,356 Parole revocation hearings FY 2007
- ◆ 709 Sex offender notification hearings

Population Served

In recent years, there has been a major legislative effort to increase penalties for existing crimes. In addition, new statutory penalties have been enacted to deal with specific populations or issues. Increased penalties and stronger enforcement have resulted in a significant increase in the population of the state's prisons and jails. The Minnesota Department of Corrections (DOC) records indicate that as of 1-1-08 there were 9,270 inmates in the state's correctional facilities, a 22% increase in the last four years. This population is the client base for the Appellate Office.

Parole revocations have increased more than 10% in one year, and 22% in the last three years. After years of double digit growth, the number of appellate files opened has returned to 2004 levels.

In 1996, the legislature enacted the community notification law for sex offenders. The law requires a review process for classifying sex offenders. Indigent offenders have the right to representation by the Appellate Office. Caseloads in this area grew 80% between FY 2004 and FY 2008. During the same time, appeals of these decisions increased by 78%.

Services Provided

The Appellate Office provides services to indigent prisoners who appeal their criminal cases to the Minnesota Court of Appeals and Supreme Court; or who pursue post conviction proceedings in the District Courts throughout the state; to defendants in supervised release/parole revocation proceedings and to individuals subject to community notification.

Historical Perspective

There is a constitutional right to counsel at public expense for indigent prisoners' appeals and parole revocation hearings. As sentence lengths increase, prisoners have more motivation to go through the appellate process, which takes about a year. They also have longer periods of supervised release, leading to more parole revocation hearings.

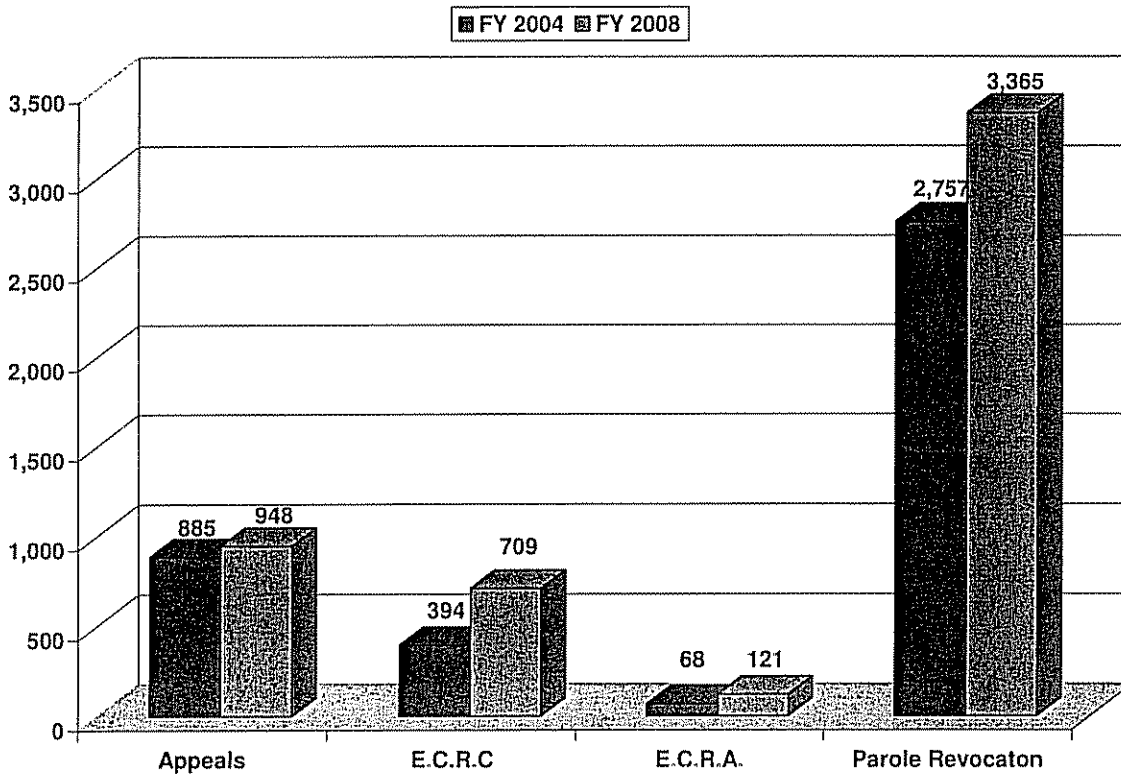
Faced with a \$3.8 million deficit for 2008/2009, the Board adopted a budget plan that included a reduction of three FTE attorneys from the Appellate Office.

This will mean that in fiscal year 2009, as many as 42 appeals in tried cases will not be assigned to a lawyer but will be placed on a waiting list. This is roughly 11% of these cases. The average time that appellate court(s) will have to wait until counsel is assigned will be approximately six months.

Delays will also occur in the post-conviction unit. This group handles all appeals in cases that were not tried (guilty plea withdrawal, sentencing, conditional release), all the parole/supervised release hearings in the state, and all the community notification cases for sex offenders.

Finally, in the past the office has staffed ECRC (End of Confinement Review Committee) hearings on behalf of sexual offenders facing placement on the community notification scale as a level 2 or 3. Due to reduced staffing, the office has shifted remaining resources from appearing at the ECRC level to providing statutorily-required representation of individuals who seek review of an ECRC decision if the individual wishes to challenge being ranked as a level 2 or 3 sex offender.

Board of Public Defense Appellate Office Cases FY 2004 & 2008



Key Program Goals

Overall the Board is committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and partnership in the justice system. For the Appellate Office, this includes:

- ◆ Providing excellent representation to clients in criminal appeals, post conviction proceedings in the District Courts, sex offender community notification and review hearings, and supervised release/parole revocation proceedings, and;
- ◆ Meeting court imposed deadlines for filing of appeals and other case matters.

Key Program Measures

- ◆ Community notification hearings are estimated to increase 80% from FY 2004 to CY 2008.
- ◆ Parole revocation hearings increased 22% from FY 2005 to FY 2007.

Program Funding

The Appellate Office has attempted to keep up with the ever-increasing caseload within its limited resources. The office has a budget of approximately \$4.6 million, \$300,000 of which is used to pay for the cost of trial transcripts. The increasing caseloads continue to make it difficult for the office to provide constitutionally mandated services, and to meet court-imposed deadlines for appellate matters.

Contact

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PUBLIC DEFENSE BOARD

Program: APPELLATE OFFICE

Program Summary

| <i>Dollars in Thousands</i> | | | | | |
|---|--------------|--------------|---------------|--------------|--------------|
| | Current | | Forecast Base | | Biennium |
| | FY2008 | FY2009 | FY2010 | FY2011 | 2010-11 |
| <u>Direct Appropriations by Fund</u> | | | | | |
| General | | | | | |
| Current Appropriation | 4,352 | 4,603 | 4,603 | 4,603 | 9,206 |
| Forecast Base | 4,352 | 4,603 | 4,603 | 4,603 | 9,206 |
| <u>Expenditures by Fund</u> | | | | | |
| Direct Appropriations | | | | | |
| General | 4,528 | 4,627 | 4,603 | 4,603 | 9,206 |
| Total | 4,528 | 4,627 | 4,603 | 4,603 | 9,206 |
| <u>Expenditures by Category</u> | | | | | |
| Total Compensation | 3,581 | 3,420 | 3,180 | 3,112 | 6,292 |
| Other Operating Expenses | 947 | 1,207 | 1,423 | 1,491 | 2,914 |
| Total | 4,528 | 4,627 | 4,603 | 4,603 | 9,206 |
| <u>Expenditures by Activity</u> | | | | | |
| State Public Defender | 4,528 | 4,627 | 4,603 | 4,603 | 9,206 |
| Total | 4,528 | 4,627 | 4,603 | 4,603 | 9,206 |
| Full-Time Equivalent (FTE) | 44.0 | 38.0 | 38.0 | 38.0 | |

Program Description

The Board's Administrative Services Office under the direction of the State Public Defender and Chief Administrator provides policy implementation for the agency's programs, and overall management of its activities.

Population Served

The Administrative Services Office provides staff support to all public defender units.

Services Provided

The Administrative Services Office provides staff support to all public defender units, and implements the Board's policies. In addition, it is responsible for management of the agency systems related to caseloads, budget, personnel, and information systems. It accomplishes this with a small administrative staff. The Administrative Services Office operates on 3% of the agency's budget.

Program at a Glance

- ◆ Budget, information systems, policy and human resources work for 500+ state employees and 200 county employees.
- ◆ Sets standards and policies for provision of public defense services statewide.
- ◆ Information system support for 29 regional offices around the state.
- ◆ Budget support for 10 district offices, appellate office and four public defense corporations.

The Board has developed and implemented policies covering personnel, compensation, budgeting, training, conflict cases, and management information systems. Caseload standards have also been adopted. The Board has also completed work on a strategic plan, a training plan, an information systems plan, and revision of personnel and office policies and is going about the task of implementing these plans. The Board is also implementing a change in the status of personnel in the Second and Fourth Judicial District Public Defender Offices. All new hires in these Judicial Districts as of January 1, 1999, are state employees.

The Information Systems (IS) Office designs, implements, and maintains systems in 12 main offices and 16 satellite offices. They are currently accomplishing this with six staff people. Significant time and effort is dedicated to maintaining and enhancing existing systems. Currently, most of the IS team's time is spent replacing the Board's time and case management system which is 12 years old and runs on software no longer supported by the developer. This updated system will also integrate with the Minnesota Court Information System (MNCIS).

Key Program Goals

Throughout its history the Board has established goals and principles to aid the agency in carrying out its mission. Overall the Board is committed to five major goals: client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and being a full partner in the justice system.

The Board's Administrative Services Office provides the district public defenders and appellate defenders with the resources they need to provide high quality legal assistance to indigent Minnesotans.

Key Measures

- ◆ 12 main offices and 16 regional offices supported by six Information Technology (IT) staff.
- ◆ A staff of 12 and 3% of the budget supports the public defender system.

Program Funding

The Board is accomplishing its mission and supporting district and appellate public defender programs with a minimal staff. Currently, 3% of the agency's budget is expended on central administration and information systems.

Contact

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Website: <http://www.pubdef.state.mn.us>

PUBLIC DEFENSE BOARD

Program: ADMINISTRATIVE SERVICES OFFICE

Program Summary

Dollars in Thousands

| | Current | | Forecast Base | | Biennium 2010-11 |
|---|--------------|--------------|---------------|--------------|---------------------|
| | FY2008 | FY2009 | FY2010 | FY2011 | |
| <u>Direct Appropriations by Fund</u> | | | | | |
| General | | | | | |
| Current Appropriation | 2,142 | 2,052 | 2,052 | 2,052 | 4,104 |
| Forecast Base | 2,142 | 2,052 | 2,052 | 2,052 | 4,104 |
| <u>Expenditures by Fund</u> | | | | | |
| Direct Appropriations | | | | | |
| General | 1,639 | 2,071 | 2,052 | 2,052 | 4,104 |
| Total | 1,639 | 2,071 | 2,052 | 2,052 | 4,104 |
| <u>Expenditures by Category</u> | | | | | |
| Total Compensation | 1,248 | 1,325 | 1,283 | 1,286 | 2,569 |
| Other Operating Expenses | 391 | 746 | 769 | 766 | 1,535 |
| Total | 1,639 | 2,071 | 2,052 | 2,052 | 4,104 |
| <u>Expenditures by Activity</u> | | | | | |
| Public Defense Board | 1,639 | 2,071 | 2,052 | 2,052 | 4,104 |
| Total | 1,639 | 2,071 | 2,052 | 2,052 | 4,104 |
| Full-Time Equivalent (FTE) | 12.0 | 12.0 | 12.0 | 12.0 | |

Program Description

The ten Judicial District Public Defender Offices provide quality criminal defense services to indigent persons in felony, gross misdemeanor, misdemeanor, juvenile delinquency, and Children in Need of Protective Services (CHIPS) cases. Under Minnesota law, all individuals accused of a felony, gross misdemeanor, misdemeanor or juvenile crime are entitled to be represented by an attorney. If an individual who is accused in one of the above proceedings cannot afford the services of a private attorney, the court will appoint a public defender to represent that individual. This is accomplished through a system that relies on a mix of full-time and part-time attorneys (50 %), as well as support staff. During fiscal year 2007, the districts provided service in 179,000 cases.

Program at a Glance

- ◆ 179,000 cases opened in 2007
- ◆ Largest user of the court system
- ◆ Caseloads nearly double American Bar Association Standards.
- ◆ 40,000 uncompensated part-time public defender hours

Population Served

Trial level public defense serves the attorney needs of indigent Minnesotans.

Services Provided

The public defender system provides trial level representation in criminal defense cases. This includes investigation, expert witnesses, and support services. This program also includes part of the cost of four nonprofit public defense corporations. The corporations provide high quality, independent criminal and juvenile defense services primarily to minority indigent defendants, who otherwise would need public defense services.

Historical Perspective

Over the last several years increased enforcement of complicated felony cases, the implementation of the Children's Justice Initiative statutory changes, and changes in court proceedings have all combined to push the public defender system in an unsustainable direction. Without action by the Board to reduce non-mandatory services, caseloads would have exceeded 810 case units per FTE defender. (A case unit is approximately equal to a misdemeanor). This is more than double the A.B.A. and Board standards. Annually over the last several years part-time defenders have provided approximately 40,000 uncompensated hours in order to handle the increased number and complexity of cases and to keep the court system operating.

The 2007 Public Safety Finance Bill mandated that most of the new funding provided to the Board be allocated to the hiring of new staff. The Board in an attempt to comply with this language began hiring in the Judicial Districts with the highest caseloads. With this funding tied to new positions, in order to fund the projected deficit the Board was facing at the beginning of 2008/2009 and the increased personnel costs for 2008/2009, savings would need to be generated through attrition and salary savings. Higher than expected salary settlements and lower than expected savings from salary savings and attrition contributed to a \$3.8 million deficit for 2008/2009.

In order to address the deficit, the Board adopted a budget for fiscal year 2009 that included an estimated reduction of fifty (50) FTE attorney positions on the district level. This is approximately 100,000 hours of attorney time. The reduction in positions was achieved through attrition, a series of voluntary separation policies, and finally layoffs.

Faced with these challenges, the Board implemented a service plan based on a set of principles which it adopted in 2003 and service delivery priorities it adopted in 2005. On the trial level these service principles include:

- ◆ Prioritize service to clients in custody;
- ◆ Evaluate the staffing of specialty courts; and
- ◆ Eliminate representation in non- mandatory cases.

The Board's service delivery priorities include:

- ◆ Constitutionally mandated criminal defense services for in-custody clients;
- ◆ Statutorily mandated criminal defense services for in-custody clients;
- ◆ Constitutionally mandated criminal defense services for out-of-custody clients;

- ◆ Statutorily mandated criminal defense services for out-of-custody clients;
- ◆ Other statutorily mandated services; and
- ◆ Other services as approved by the Board of Public Defense.

Following these principles and priorities, the Board voted to eliminate non-mandated services, namely representation of parents in child protection cases (CHIPS), and appearances at post-adjudication drug courts.

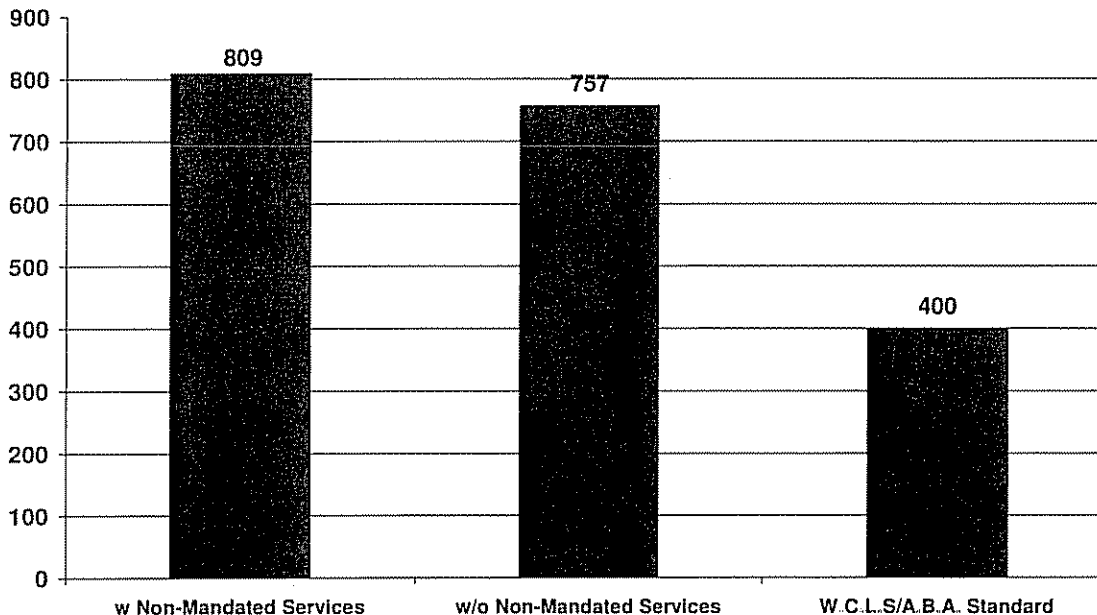
The representation of parents in child protection cases is not a mandated service for public defenders, although this service has been provided in the past. Representation of parents is statutorily a county function (M.S. 260C.331 Subdivision 3(d)). Public defenders continue to represent children over ten years of age in these proceedings. (M.S. 611.14).

There are 33 drug courts operating around the state. Drug courts include initial intensive treatment services with ongoing monitoring and continuing care for a year or more. This results in extensive time commitments for all those involved in drug court including public defenders. Participant contacts with the public defenders are frequent and on-going and occur at each status hearing. The establishment of drug court and the requirements of the court dictate that staff be assigned specifically to that court. This places a burden on the public defender system since a defender is taken out of the regular court, thereby reducing the "economy of scale" in the regular court and putting an extra burden on the remaining defenders.

Except for probation revocation, appeal, and release (parole) revocation cases, the constitutional right to counsel ends when the sentencing hearing ends. Thus "post-adjudication" services in the trial courts, with the exceptions noted are not mandated services. Clients in these "post-adjudication" courts are in the same status as clients who have been convicted and sentenced to probation: they have a right to counsel if they are accused of a violation, but not the constant attention of counsel while probation is going smoothly.

Even with the elimination of non-mandated cases the average caseload is expected to increase to approximately 760 case units per FTE attorney. This again assumes no increase in the overall caseload.

STATE OF MINNESOTA BOARD OF PUBLIC DEFENSE
CASE UNITS PER F.T.E. ATTORNEY w CY 2007 CASELOADS



Over the past ten years, 26 new judgeships have been created. With each of these judgeships comes another calendar (court room) where public defenders must appear. These new judgeships were created without a corresponding increase in public defender staff.

The board is the largest user of the state court system. Caseload increases, changes in court procedures, calendaring of cases, statutory changes, and changes in prosecution directly impact the board's ability to provide quality legal services to its clients. The efficiency and integrity of the judicial system are dependent on the public defender system's ability to provide quality legal services. If it cannot provide these services, court cases are continued, jails sit filled, and appeals and complaints rise. In short, the criminal justice system stops.

The public defender system does not and cannot control its client intake or workload. These important variables are controlled by external circumstances, such as: local government decisions that increase police and prosecution, new constitutional mandates, Supreme Court Rules, sentencing guideline changes, statutory changes, and judicial calendaring changes. Among the new challenges are the increased emphasis on prosecution of sex offenders, methamphetamine, and child protection cases.

Key Program Goals

Throughout its history the Board has established goals and principles to aid the agency to carry out its mission. Overall the Board is committed to five major goals:

- ◆ Client centered representation
- ◆ Creative advocacy
- ◆ Continual training for all staff
- ◆ Recruitment and retention of excellent staff
- ◆ Full partner in the justice system

Key Measures

- ◆ 179,000 cases were opened in FY 2007.
- ◆ Countless resources are lost as judges, court staff, prosecutors, victims and witnesses wait due to a lack of public defenders.
- ◆ 33 drug courts are operating statewide.
- ◆ District public defenders carry caseloads that average nearly twice the recommended standards.
- ◆ Prosecutors outnumber defenders by more than 2 to 1 statewide.
- ◆ Part time public defenders provided in excess of 40,000 uncompensated hours in FY 2007.

Program Funding

The current appropriation for this program is approximately \$55 million annually. Increased personnel costs as well as costs related to insurance and retirement have strained district budgets. A lack of public defenders and increased caseloads and time demands mean that the court system often has to sit idle and wait for public defenders to become available. The result is a weakened court and a criminal justice system which experiences major delays and often must stop the processing of defendants.

Contact

Kevin Kajer
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Email: kevin.kajer@state.mn.us
Website: www.pubdef.state.mn.us

PUBLIC DEFENSE BOARD

Program: DISTRICT PUBLIC DEFENSE

Program Summary

Dollars in Thousands

| | Current | | Forecast Base | | Biennium |
|---|---------------|---------------|---------------|---------------|----------------|
| | FY2008 | FY2009 | FY2010 | FY2011 | 2010-11 |
| <u>Direct Appropriations by Fund</u> | | | | | |
| General | | | | | |
| Current Appropriation | 59,854 | 61,373 | 61,373 | 61,373 | 122,746 |
| Forecast Base | 59,854 | 61,373 | 61,373 | 61,373 | 122,746 |
| <u>Expenditures by Fund</u> | | | | | |
| Carry Forward | | | | | |
| Miscellaneous Special Revenue | 47 | 0 | 0 | 0 | 0 |
| Direct Appropriations | | | | | |
| General | 59,894 | 61,617 | 61,373 | 61,373 | 122,746 |
| Statutory Appropriations | | | | | |
| General | 600 | 565 | 450 | 450 | 900 |
| Gift | 167 | 221 | 180 | 180 | 360 |
| Total | 60,708 | 62,403 | 62,003 | 62,003 | 124,006 |
| <u>Expenditures by Category</u> | | | | | |
| Total Compensation | 43,055 | 40,560 | 40,292 | 40,332 | 80,624 |
| Other Operating Expenses | 4,552 | 8,400 | 8,268 | 8,228 | 16,496 |
| Local Assistance | 13,101 | 13,443 | 13,443 | 13,443 | 26,886 |
| Total | 60,708 | 62,403 | 62,003 | 62,003 | 124,006 |
| <u>Expenditures by Activity</u> | | | | | |
| District Public Defense | 60,708 | 62,403 | 62,003 | 62,003 | 124,006 |
| Total | 60,708 | 62,403 | 62,003 | 62,003 | 124,006 |
| Full-Time Equivalent (FTE) | 584.1 | 477.5 | 477.5 | 462.5 | |

Dollars in Thousands

| | Actual FY2008 | Budgeted FY2009 | Current Law | | Biennium 2010-11 |
|--------------------------------------|------------------|--------------------|-------------|------------|---------------------|
| | | | FY2010 | FY2011 | |
| <i>Non Dedicated Revenue:</i> | | | | | |
| Total Non-Dedicated Receipts | 0 | 0 | 0 | 0 | 0 |
| <i>Dedicated Receipts:</i> | | | | | |
| Grants: | | | | | |
| Gift | 178 | 178 | 178 | 178 | 356 |
| Other Revenues: | | | | | |
| Gift | 2 | 2 | 2 | 2 | 4 |
| Total Dedicated Receipts | 180 | 180 | 180 | 180 | 360 |
| Agency Total Revenue | 180 | 180 | 180 | 180 | 360 |

**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE
331 SECOND AVE S. NO. 900
PH. 612-349-2565
FAX 612-349-2568**

Memo

To: Governor Pawlenty, Commissioner Tom Hanson

Cc: Jim King, Executive Budget Officer

From: Kevin Kajer, Chief Administrator

Date: 10/6/2008

Re: 2010-2011 Assessment

Background and Mission

In 1961 Clarence Earl Gideon (an innocent man) was charged in a Florida state court with a felony for breaking and entering. He lacked funds and was unable to hire a lawyer to prepare his defense. When he requested the court to appoint an attorney for him, the court refused, stating that it was only obligated to appoint counsel to indigent defendants in capital cases. Gideon defended himself in the trial; he was convicted by a jury and the court sentenced him to five years in a state prison.

In a unanimous opinion, the United States Supreme Court held that Gideon had a right to be represented by a court-appointed attorney. In this case the Court found that the Sixth Amendment's guarantee of counsel was a fundamental right, essential to a fair trial. Justice Black called it an "obvious truth" that a fair trial for a poor defendant could not be guaranteed without the assistance of counsel. Those familiar with the American system of justice, commented Black, recognized that "**lawyers in criminal courts are necessities, not luxuries.**"

The mission of the Board of Public Defense is to provide quality criminal defense services to indigent defendants in the state of Minnesota through a cost-effective and efficient public defender system. Throughout its history the Board has established goals and principles to aid the agency to carry out its mission. Overall the Board is committed to five major goals, client centered representation, creative advocacy, continual training for all staff, recruitment and retention of excellent staff, and full partnership in the justice system.

The public defense system is the largest customer of the courts. Public defenders provide service in every courthouse in Minnesota, handling over 179,000 cases per year. It is estimated that public defenders provide service in 85-90% of the serious criminal cases in the state, and over 90% of the juvenile delinquency cases.

The Board does not and cannot control its caseload. The Board must provide the services specified in statute. In addition, the Minnesota State Supreme Court (Dzubiak v Mott) has recognized that a public defender "may not reject a client, but is obligated to represent whoever is assigned to her or him..." At the same time public defenders are held to the same ethical standards as private attorneys in regard to the handling of cases, as they should be.

Strategies

The Board has been committed to a cost effective model of representation, namely a combination of full time and part-time defenders. As opposed to paying by the hour or case, the Board's model is not only cost effective but costs tend to be more stable. The use of part-time defenders provides more flexibility especially where there are conflicts in representation. This has also allowed the Board to limit the number of full-time offices because the part-time defenders cover much of their own overhead.

Over the last several years the Board has implemented an extensive training program for attorneys and support staff. Attorneys are provided with a full range of Continuing Legal Education Credits. A trial school has been developed at one-half the cost of sending employees to a school outside of the agency. Support staff training has included certification of investigators as well as a paralegal institute and sentencing advocacy programs. All of these have been done within the budget and with mostly internal resources.

The Board is committed to keeping administrative costs in check. Approximately 97% of the Board's budget is direct service to clients.

Where funding has allowed the Board has added support staff to provide services in lieu of attorney time. The Board has adopted technology to improve efficiency. It has completed an on line brief bank system where attorneys can share legal research. It is currently retooling its time and case management system to capture data that is already being entered in MNCIS (Minnesota Court Information System). This will eliminate redundant entry of data and save attorney time.

Programs and Priorities

A "perfect storm" of an ongoing deficit, higher than expected personnel cost increases, lower than expected attrition and salary savings rates, and a legislatively imposed budget reduction presented the Board with a significant budget deficit for fiscal year 2009 and threatens to undermine the mission and goals of the Board.

Managing attorney positions have been established but these attorneys have excessive caseloads which take away from supervision, training, and mentoring of younger lawyers. Specialized juvenile divisions have emerged but lack the resources to provide adequate service. Finally, there has been a chronic shortage of support staff positions. As of June of this year there were ten (10) lawyers for every investigator, and eighteen (18) attorneys for every paralegal and sentencing advocate. This is more than double the standards recommended by the American Bar Association.

Faced with a reduction in its attorney staff, caseloads in excess of double ABA standards, and 44,000 uncompensated part-time public defender hours, the Board implemented a service plan based on the principles which it adopted in 2003 and service delivery priorities it adopted in 2005. Following these principles and priorities, the Board voted to eliminate non-mandated services. However, even with the elimination of non-mandated cases the average public defender caseload is expected to increase to more than 750 case units per F.T.E attorney, or approximately 180% of the caseload standards. **This assumes no increase in the overall caseload and no return to providing non-mandated services.**

On the appellate level staff reductions have meant that as many as 11% of the appeals in tried cases will not be assigned to a lawyer. The average time that appellate court(s) will have to wait until counsel is assigned will be approximately six months. By fiscal year 2010 the wait could reach one year. All of this assumes that case growth remains flat.

In the post conviction unit (appeals in cases that were not tried (guilty plea withdrawal, sentencing, conditional release, parole revocation) delays will also occur. At some point, the delay in appellate services could eventually lead to the courts ordering the release of prisoners who have been on the waiting list too long. In addition, it would also seriously affect the ability of the unit to meet its statewide obligations in parole revocation cases where there is a constitutional right to counsel because it would not be possible to cover all hearings scheduled by the Department of Corrections.

Finally, staff reductions will also reduce the unit's ability to provide statutorily required representation in community notification cases.

In order to meet the priorities or goals of the Board within the base budget further service changes may be necessary. The top priority would be to provide service to persons in custody, accused of felonies. Cases involving misdemeanors, less serious felonies and out of custody cases would be greatly delayed. The speedy trial rights and the courts' timelines for timely case processing would not be met. All of this would adversely impact victims, other justice agencies and the general public.

Trends and Outside Influences

The public defender system does not and cannot control its client intake or workload. These important variables are controlled by external circumstances, such as: local government decisions that increase police and prosecution, new constitutional mandates, Supreme Court Rules, sentencing guideline changes, statutory changes, and judicial calendaring changes.

No one is arguing the merits of these decisions, but they do come with a cost.

Over the past ten years, twenty-six (26) new judgeships have been created. With each of these judgeships comes another calendar (court room) where public defenders must appear.

Counties and cities have increased staffing of prosecutors and police. A recent survey by District Chief Public Defenders indicates that there are twice as many prosecutors across the state as there are public defenders.

There are thirty-three (33) drug courts operating around the state. In addition there are mental health courts, DWI courts, and domestic abuse courts. Drug courts include initial intensive treatment services with ongoing monitoring and continuing care for a year or more. This results in extensive time commitments for all those involved in drug court including public defenders. These courts are beneficial to society, but also very labor intensive.

Since 2000 the Supreme Court has implemented the Children's' Justice Initiative (CJI). The "CJI," emphasizes the urgency of responding to child welfare cases much more quickly, and with much better standards of practice. It includes a best practices guide for child protection (CHIPS) cases. The challenge for the Board has been to find the resources to provide the services that the CJI requires.

Over the last several years several changes have been made in the criminal justice system. While many of these changes have resulted in efficiencies and savings to parts of the judicial system, some have increased the costs for other judicial system partners. The elimination of mandatory transcripts by the Supreme Court saved the court over \$1 million. However, this change added costs to the public defender system. What was a matter of pulling a transcript out of the court file is now a request for a transcript that must be produced by a court reporter and paid for.

The establishment of regional jails has decreased costs and travel times for local units of government. However, it has increased the time commitments and travel costs of the public defender system when attorneys and staff must travel greater distances to meet with clients.

In the area of technology the use of interactive television (ITV) and electronic discovery are two areas which while providing some efficiencies have the potential to shift costs to the public defender system.

With respect to the use of ITV, Supreme Court Rules mandate that the prosecutor can not be alone in the courtroom with the judge and the defense lawyer must be with the client. In these instances it may be necessary to have a public defender in the courtroom with the prosecutor and the judge, at the same time that there is a public defender in the jail (regional jail?). This also may create logistical problems, for example, if the same lawyer has 3 clients "in person" in the courtroom and 3 more "ITV" clients being broadcast from the jail.

In the area of e-discovery there are hundreds of jurisdictions which all make their own decisions on software. In some instances the discovery includes material from proprietary systems that are outside of government control the codes to which the Board does not have access to. The transmittal of photos and videotapes via e-mail has the potential to shut down the e-mail system. Finally, approximately one-half of public defenders are part-time. The Board does not provide support to or regulate the equipment or internet connections of these defenders. In some parts of the state there is a lack of high speed internet connection. In many instances the volume of the discovery material would overwhelm a part-time defender's ability to receive the data as well as manage it. While the Board is trying to adapt to electronic discovery. To date this has proved difficult due to a shortage of technology resources as well as the issues mentioned above.

Conclusion

Even with the changes mentioned above, it must be noted that they cannot replace the 6th Amendment guarantee of the right to counsel.

Without an adequate number of public defenders the court system must slow down the processing of cases, which creates larger and larger court calendars; this means more time in court for lawyers, judges, court personnel and others, much of which can be idle time waiting for the case to be called. The result of this is an increase in the cost of processing cases, for the state and the counties. In addition, due to the fact that court calendars are overcrowded and time consuming, the court time available for the resolution, by trial or hearing of civil cases may be delayed at a substantial cost to everyone involved.

Often public defenders are scheduled in two different court rooms (many times in two different counties) at the same time. This brings the court system to a halt. In these instances victims, witnesses, law enforcement and court personnel sit idle waiting for public defenders. In some instances public defenders have been threatened with contempt for not appearing in a court room even when they are scheduled and appearing in another court room or county.

In most parts of the state there are not enough public defenders to represent clients at first appearance. This includes making bail arguments. The lack of public defenders increases the costs of incarceration of individuals in the already overcrowded county jails. As of May 2008, county jails were at 105% of capacity. These costs include but are not limited to jail staff and facility expense but also medical and dental expense as well.

Without additional funding the agency will not be able to meet its mission and goals during in the 2010-2011 biennium. In 2003, faced with a significant budget reduction the Board of Public Defense approved a set of budget and service principles to guide any future budget decisions. On the trial level these **budget principles** included:

1. Minimize negative impacts on clients
2. Maintain a statewide public defender system
3. Minimize impact on staff and infrastructure
4. Place a priority on services mandated by statute or constitution

The **service principles** include:

1. Prioritize service to clients in custody,
2. Evaluate the staffing of specialty courts
3. Eliminate representation in non- mandatory cases

Again facing a major budget deficit in FY 2005, the Board developed a service delivery plan based on the 2003 case priorities. The Board's **service delivery priorities** include:

- Constitutionally mandated criminal defense services for in-custody clients
- Statutorily mandated criminal defense services for in-custody clients
- Constitutionally mandated criminal defense services for out-of-custody clients

- Statutorily mandated criminal defense services for out-of-custody clients
- Other statutorily mandated services
- Other services as approved by the Board of Public Defense

The Board's service priorities also include a provision that attorneys will be provided with a reasonable balance of "in-court" and "out-of-court" hours. The Board is cognizant of the needs of the defenders, both full and part time. Out-of-court time is critical to prepare their clients' cases, time to meet and consult with their clients, and in the case of part-time defenders, time to be diligent in the representation of not only their public defender clients but equally so, their private clients. This will result in further limiting public defender availability for in-court hours, and may result in additional prioritization of cases. (In custody) If this occurs the court system will be further impacted and may come to a complete stop in some areas of the state. This will have ramifications not only for the courts, but county jails, law enforcement, prosecutors and the general public.

In short, the Board continues to be committed to its mission; however its reduced staff has already slowed down the entire justice system and required both other justice agencies and the public to wait for our lawyers to provide their mandated services.



**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE
HOUSE PUBLIC SAFETY FINANCE DIVISION
2009**

BUDGET AND SERVICE **PRIORITIES**

Budget Principles:

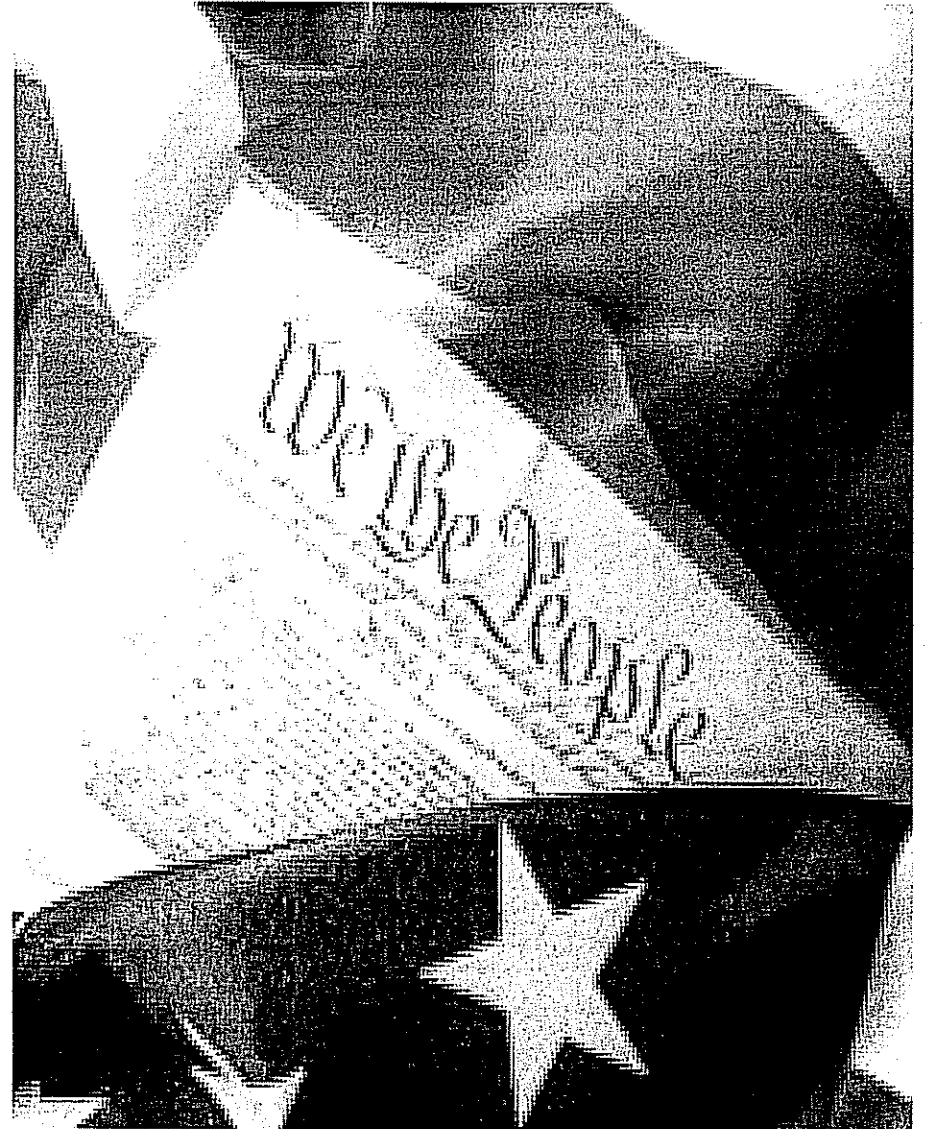
- **Minimize negative impacts on clients.**
- **Maintain a statewide public defender system.**
- **Minimize impact on staff and infrastructure.**
- **Place a priority on mandated services.**

Service Priorities:

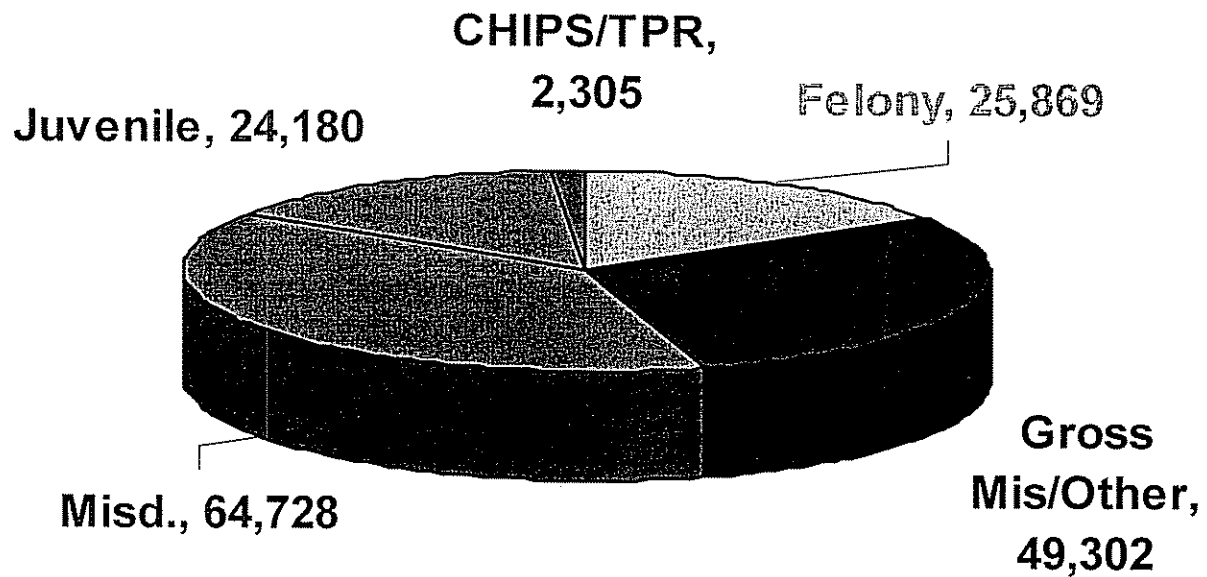
- **Prioritize service to clients in custody.**
- **Evaluate the staffing of specialty courts.**
- **Eliminate representation in non-mandatory cases.**

BOARD OF PUBLIC DEFENSE

- **Largest User of Courts**
- **Provide Service in Every County/Courtroom**
- **Quality Control for the Criminal Justice System**
- **Caseloads controlled by outside factors**
- **Time commitments controlled by outside factors**

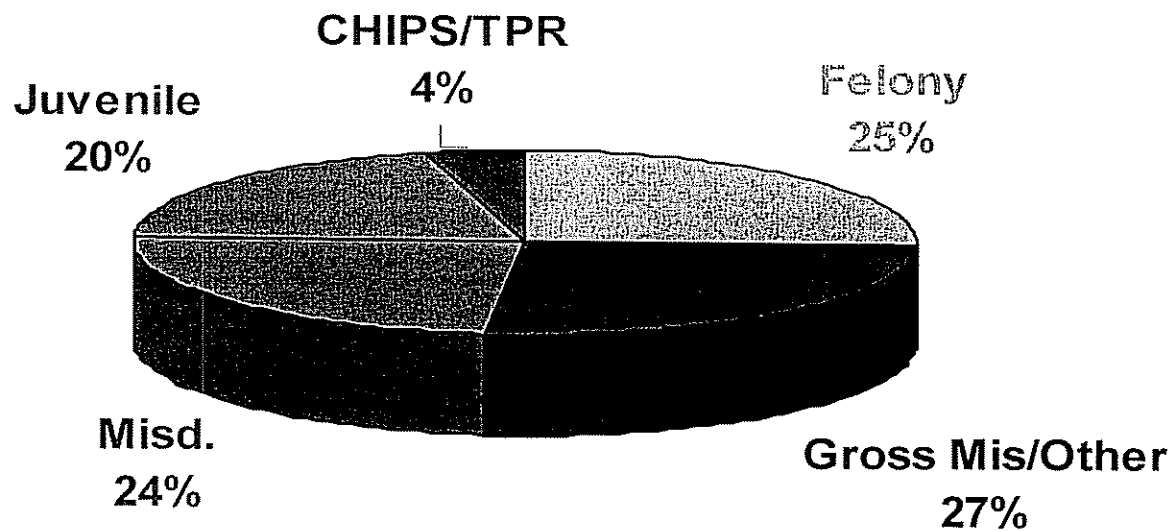


ESTIMATED F.Y. 2009 CASES BY CASE TYPE (Based on July-Oct)

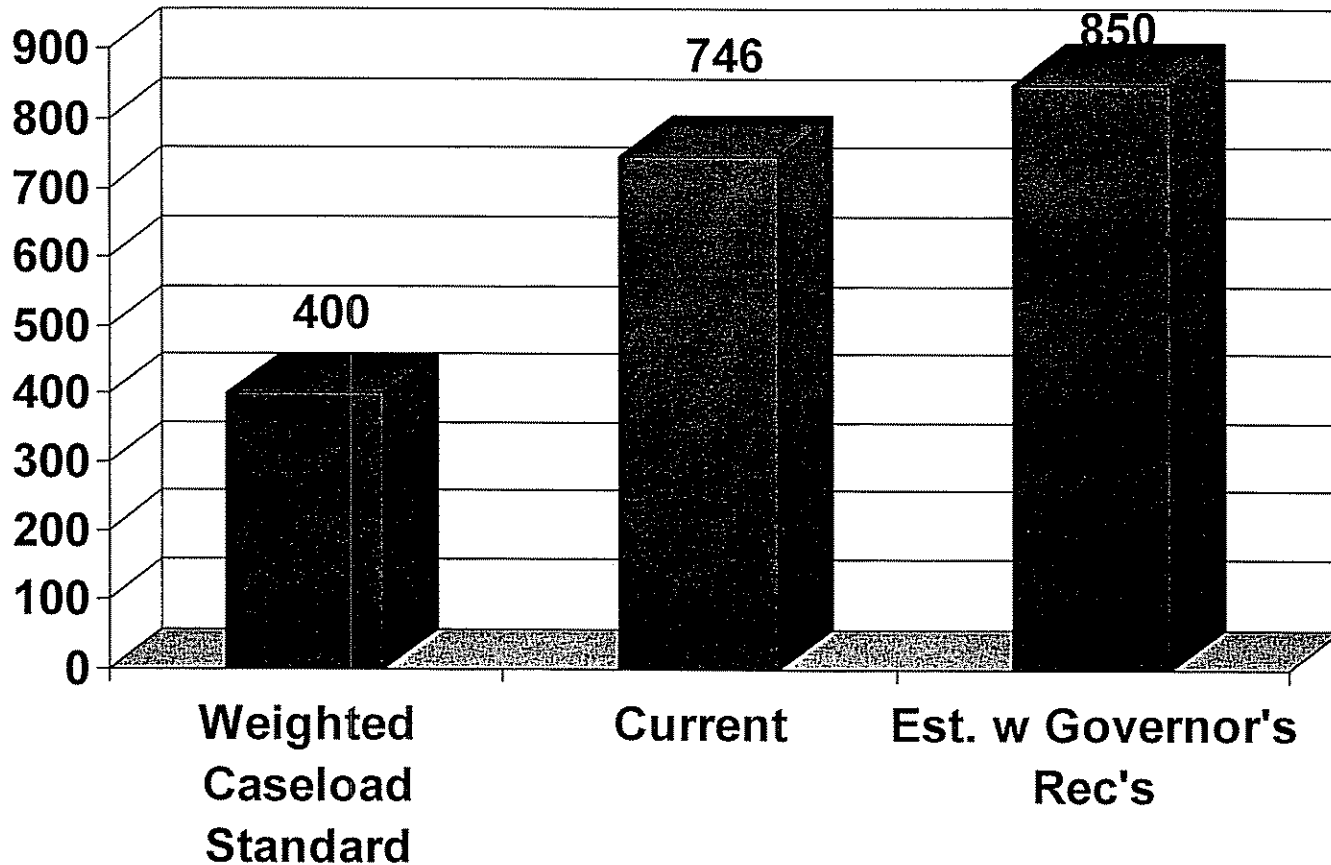


ESTIMATED F.Y.2009 CASE UNITS BY TYPE

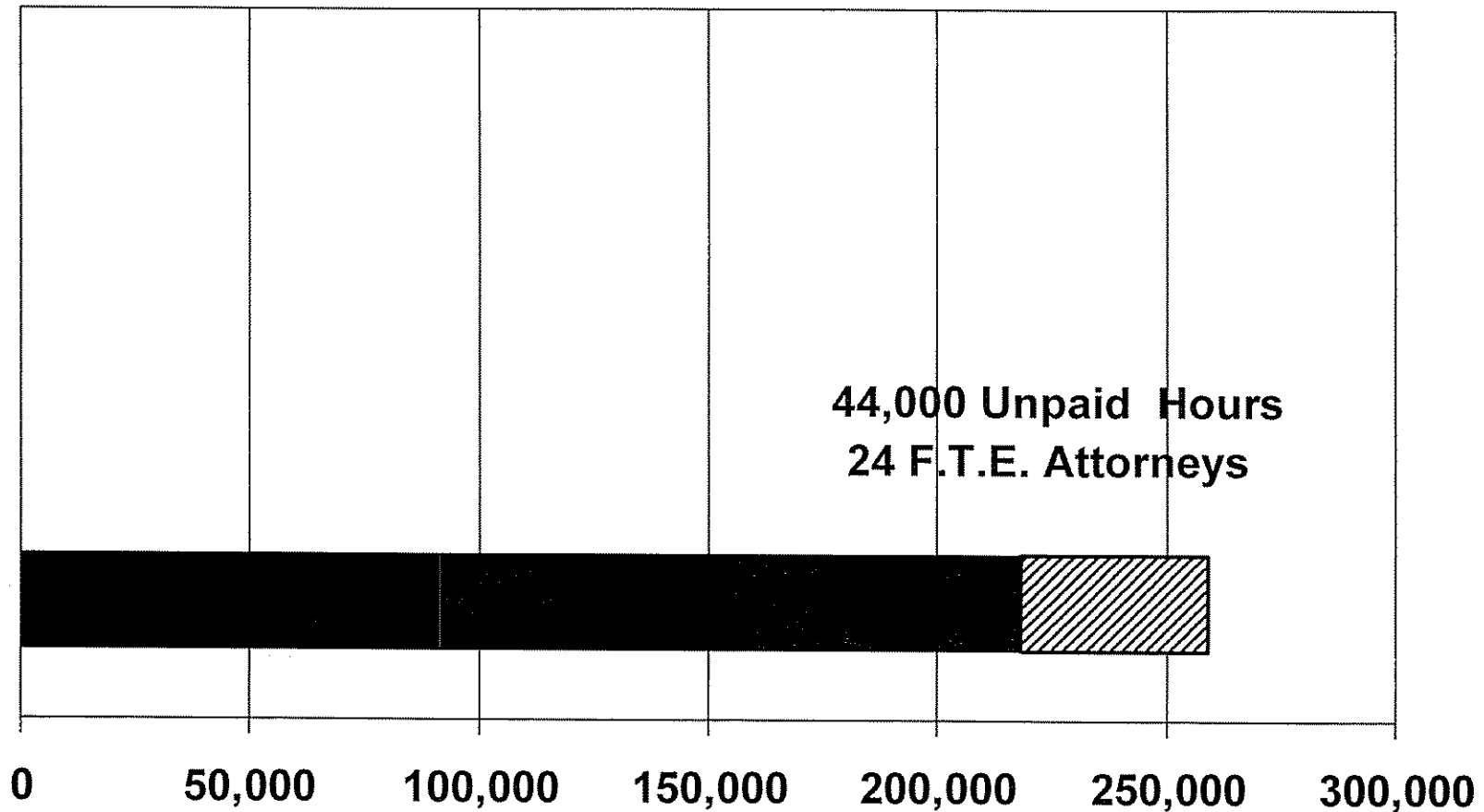
(Case unit is approx. = to a misdemeanor)



Estimated Case Units Per F.T.E. Attorney



BOARD OF PUBLIC DEFENSE PART-
TIME PUBLIC DEFENDER UNPAID
HOURS F.Y.2008



CASELOADS/TIME **COMMITMENTS**

- **The Board does not and cannot control caseloads or workloads.**
- **These are controlled by external factors: increases in police and prosecution, legislative changes, constitutional mandates, Supreme Court Rules, sentencing guideline changes, and judicial calendaring changes.**

EXAMPLES OF OUTSIDE FACTORS

- 1987-2005, the Legislature created 86 sentencing enhancements.
- Statewide prosecutors outnumber defenders 2 to 1.
- 1998-2008, 26 new judgeships were created, each with a court room needing services.
- 33 drug courts operating- very labor-intensive
- Stearns County awarded \$300,000 for a Domestic Violence Court.
- Hennepin County Sheriff awarded a \$500,000 federal grant for DNA testing to help reduce a backlog of “thousands” of cold cases.
- State Patrol received \$175,000 for Holiday DWI Enforcement.
- Travel- (Calendar coverage)
- Sting Operations (I.e. Roseau, MN)
- 2000-Present Supreme Court implements Children’s Justice Initiative (CJI) In Child Protection Cases.

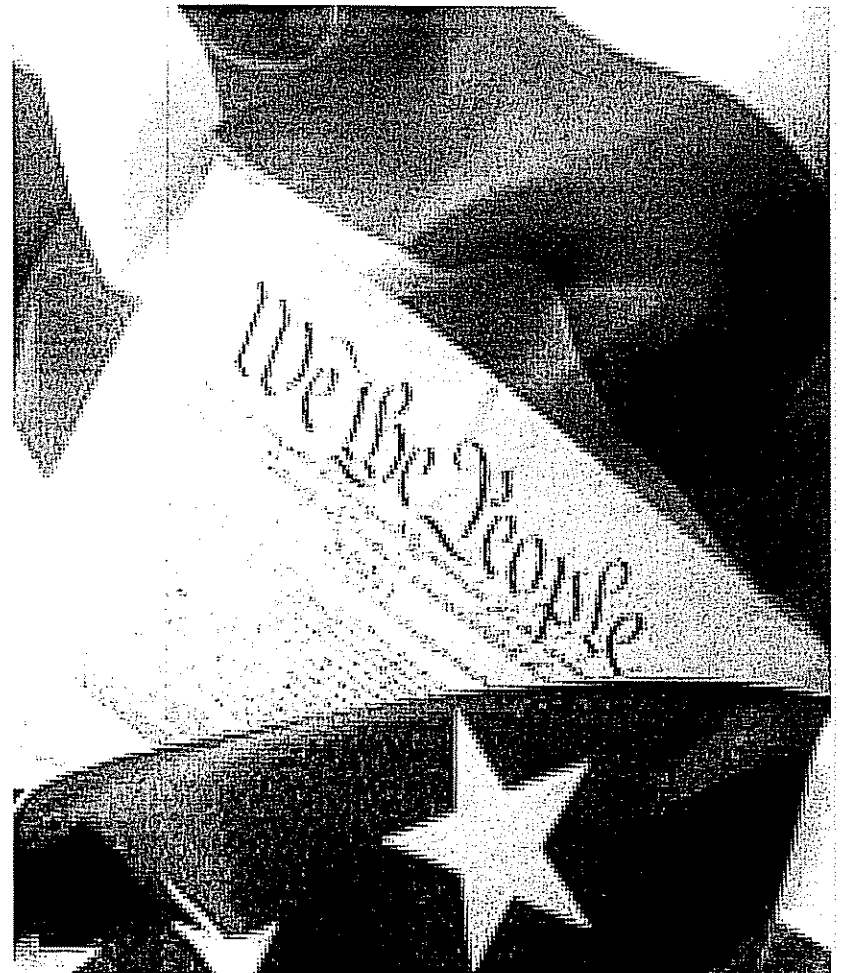
Board Of Public Defense Fiscal **Year 2009 Budget**

- Loss of 50 F.T.E. attorney positions on the district level.
- Loss of 3 attorney positions on the appellate level.
- Total loss of 12% of the attorney staff.
- Loss of 100,000 hours of attorney time.
- 19 other positions went unfilled.

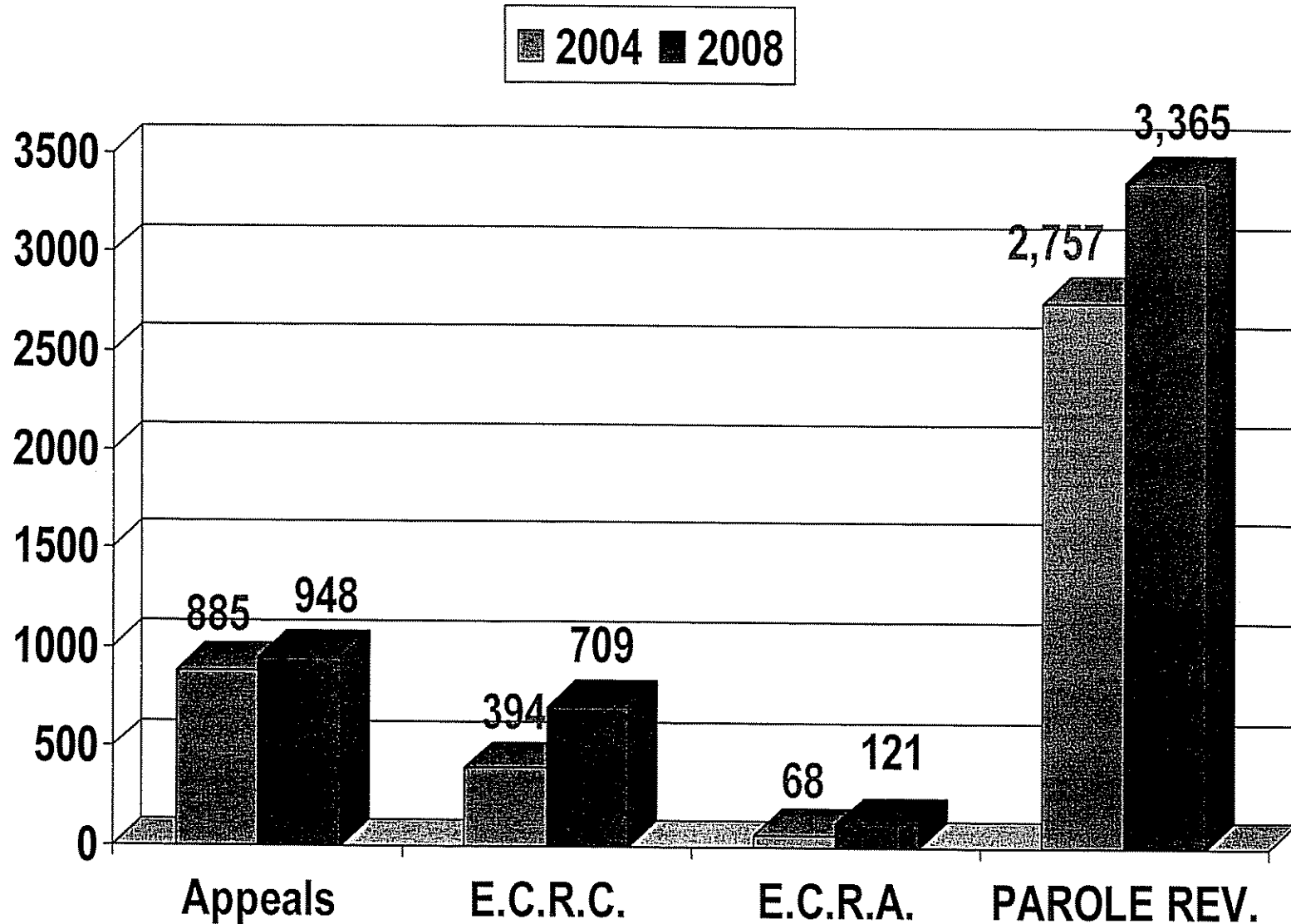
APPELLATE OFFICE

Provides constitutionally mandated services in:

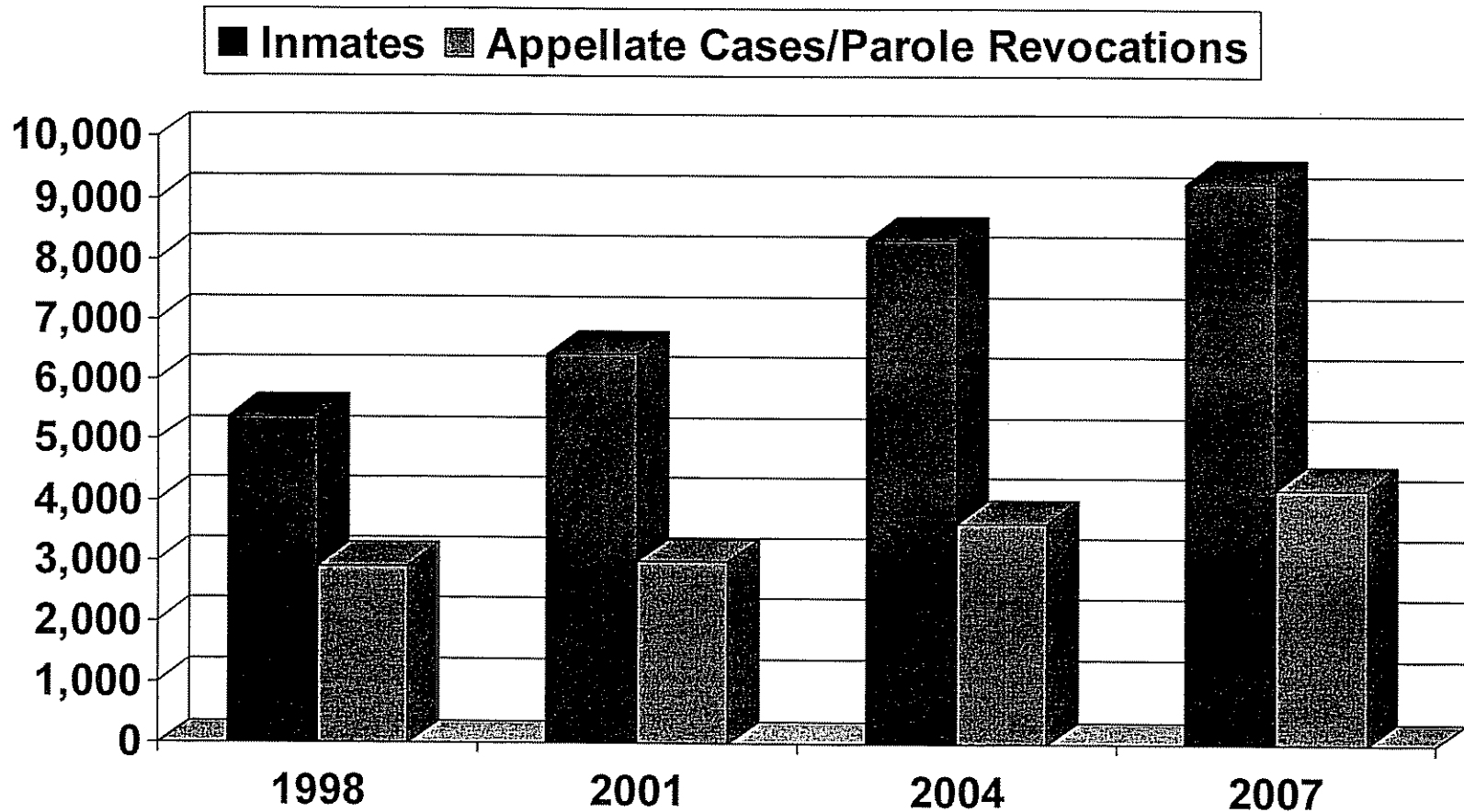
- Criminal appeals
- Post conviction proceedings
- Supervised release proceedings
- Sex offender community notification (ECRC) and
- review hearings (ECRA)



APPELLATE CASELOADS 2004 and 2008

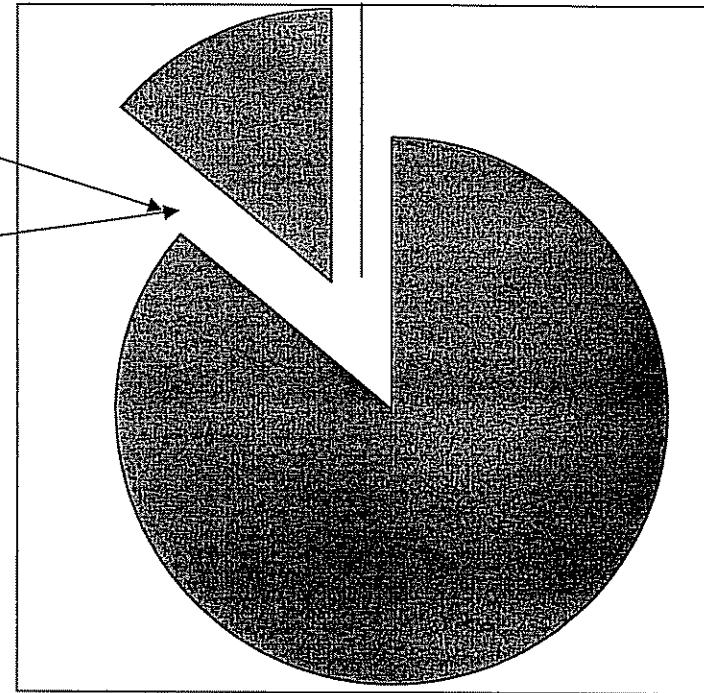


D.O.C. INMATES v APPELLATE CASES OPENED & PAROLE REVOCATION CASES 1998-2007



Governor's Recommendation Staffing

- **5% Reduction**
- **Equates to 50+ (Est.)
F.T.E. Attorneys**
- **14% of the Staff**
- **100,000 Hours of
Attorney Time**



Potential Impacts

- **No out of custody cases. (Major delays)**
- **Case and time limits established.**
- **Defendants will be out of custody longer increasing risks to public safety.**
- **The integrity of the judicial system and the rule of law will be questioned.**
- **In Greater Minnesota there will be counties without public defenders.**

Potential Impacts

- **Limited appearances- Courts will have limited access to public defenders.**
- **There will be counties without public defenders.**
- **In the more urban counties the number of calendars that can be staffed will be reduced, essentially idling many court rooms.**
- **Often public defenders are scheduled in two different court rooms; this brings the court system to a halt.**
- **Part Time Public Defender Hours- ??????????**
- **The speedy trial rights and the courts' timelines for timely case processing will not be met.**
- **Jail Overcrowding**

Potential Impacts

Appellate Level

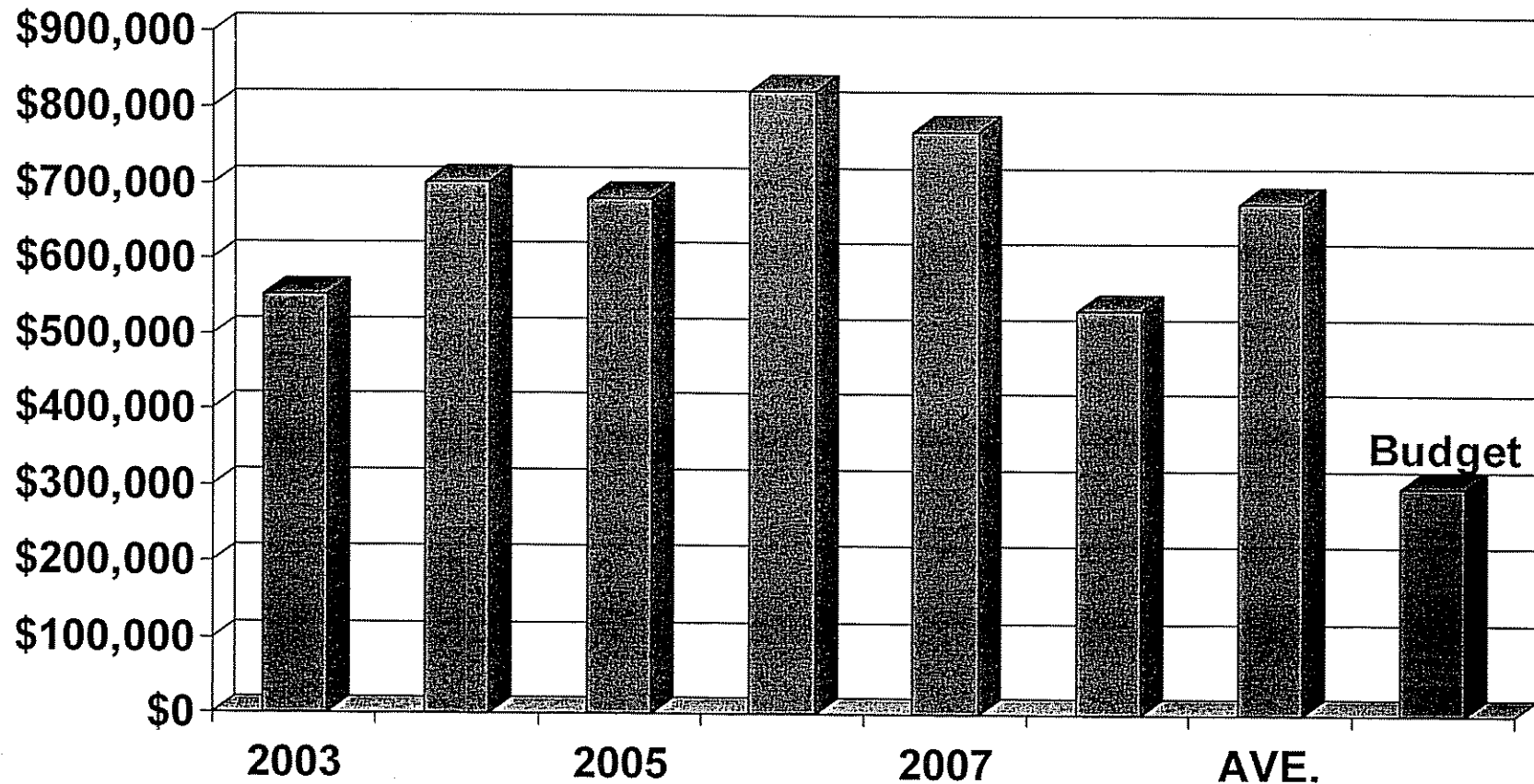
- **The average time that appellate courts will have to wait until counsel is assigned could increase to a year or more.**
- **Sentencing errors not rectified could lead to people staying in prison too long at a cost to themselves and the Department of Corrections.**
- **The Court of Appeals will be unable to decide cases in a just and timely manner.**
- **In the post conviction unit (appeals in cases that were not tried (guilty plea withdrawal, sentencing, conditional release, parole revocation) further delays will also occur.**
- **At some point, the delay in appellate services could lead to the courts ordering the release of prisoners who have been on the waiting list too long.**
- **Community notification hearings could be delayed or stopped altogether. This could jeopardize the state's ability to continue to properly supervise sexually dangerous persons.**

Board of Public Defense 2010-2011 Budget Request (\$000)

| | <u>FY 2010</u> | <u>FY 2011</u> |
|-----------------------|----------------|-----------------|
| • Deficit(53 F.T.E.s) | \$3,701 | \$3,914 |
| • 2010/2011 Personnel | \$2,838 | \$6,499 |
| • Support Staff | \$610 | \$645 |
| • Mandated Costs* | \$582 | \$650 |
| • PD Corporations | \$87 | \$179 |
| TOTAL | \$7,818 | \$11,887 |

* Transcripts, Mileage, Rent

Board of Public Defense Appellate Transcript Costs F.Y. 2003-2008



No. C 9-81-1206

**STATE OF MINNESOTA
IN SUPREME COURT**

OFFICE OF
APPELLATE COURTS

JUN 4 2009

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

Petitioner

Dorsey & Whitney LLP
James K. Langdon (#0171931)
Britta Schnoor Loftus (#0388020)
Meghan E. Lind (#0389034)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
(612) 340-2600

*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 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 HAMLIN 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

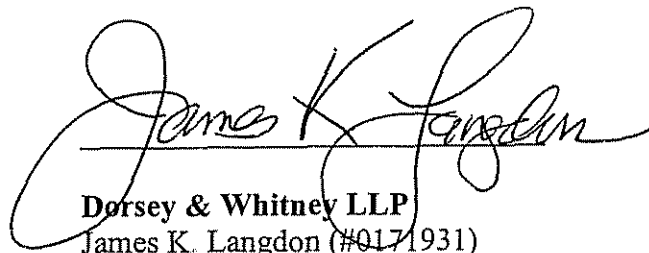
² In addition to Minnesota, other states have used LRF to provide funding for legal services. *See, e.g.,* New York State Unified Court System, *Attorney Registration: Registration FAQ*, Mar. 12, 2008, <http://www.nycourts.gov/attorneys/registration/faqs.shtml#q1> (last visited May 31, 2009) (providing 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, reading "James K. Langdon". The signature is written in a cursive style with large, flowing loops. A horizontal line is drawn across the middle of the signature, passing through the "K" and "L".

Dorsey & Whitney LLP

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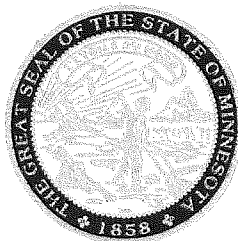
Attorneys for Petitioner

Legal Services Planning Committee

District Court of Minnesota

SEVENTH JUDICIAL DISTRICT

DAVID R. BATTEY
JUDGE OF DISTRICT COURT



CHAMBERS
DOUGLAS COUNTY COURTHOUSE
305 EIGHTH AVENUE WEST
ALEXANDRIA, MN 56308
TELEPHONE (320) 762-3033
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July 6, 2009

Mr. Frederick K. Grittner
Clerk of Appellate Courts
25 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

JUL - 9 2009

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**RE: Supreme Court File No. C1-81-1206
Comments on Proposed Amendments to the Rules of the
Supreme Court on Lawyer Registration**

To the Honorable Members of the Minnesota Supreme Court:

I am writing to provide my opposition to the Petition filed by the Board of Public Defense (BOPD), seeking to increase the lawyer registration fee by \$75 per year. As noted in the Order seeking comments, these are "constitutionally mandated" services to public defender clients which should, and have historically, been funded by the state legislature out of the general fund. This is a mandated governmental obligation and should not be paid for in part by a small group of professionals who are required to pay registration fees each year. I find it quite repugnant that the legislature has simply neglected to perform its duty of funding this constitutional obligation. This proposal is contrary to my notion of fairness and good government and would lead us down a slippery slope. What if they need more funds next year? I believe this proposal is also a likely violation of the Constitutional guarantee of equal protection under the law for all citizens. While I am sympathetic to the concerns of the public defenders, those concerns should be addressed to the legislature. I do not believe that your court should succumb to political pressure from the legislature to make up funding gaps.

On the other hand, I have no objection whatsoever to increasing the registration fee for the Legal Services Advisory Committee.

Thank you for allowing input.

Very truly yours,

A handwritten signature in black ink that reads "David Battey".

David R. Battey
Judge of District Court

MSBA



July 9, 2009

Minnesota
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JUL 10 2009

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Re: *Petitions of Board of Public Defense (BOPD) and the Legal Services
Planning Committee (LSPC) seeking amendment to Rule 2A of
Minnesota Rules of Supreme Court on Lawyer Registration.
Supreme Court File C1-81-1206*

Honorable Justices of the Supreme Court:

This letter is submitted in response to the petitions of the BOPD and the LSPC seeking respective increases to the attorney registration fee of \$75.00 to pay for criminal public defense and \$25.00 to pay for civil legal services for the indigent. The policy position reflected in this letter may be considered the official position of the governing Assembly of the 16,000 plus member Minnesota State Bar Association (MSBA); a policy position which was formally adopted by the Assembly on June 26, 2009.

BOPD Petition:

During the deliberations this past spring which led to the legislation that recommended the attorney registration fee be increased by the Supreme Court by an amount up to \$75.00 to be dedicated to criminal public defense funding, the MSBA did not actively support nor did it actively oppose that legislation.

Aside from the fact that the governing Assembly of the MSBA did not have time to convene and adopt an official position on the legislative proposal regarding public defense funding when it was first formally introduced late in the session, the MSBA's lack of overt opposition was still based upon a couple of considered points.

First, the \$75.00 proposed attorney registration fee increase for public defense funding was, because of the unique economic circumstances facing the State, suggested as a necessary part of a varied set of funding measures needed to meet the goal of providing adequate funding for the Justice System -- a goal which the MSBA was itself very active in supporting.

Letter from Leo I. Brisbois
July 9, 2009
Page 2

Second, the \$75.00 proposed attorney registration fee increase for public defense funding was seen as a less draconian alternative to other suggested funding sources such as the regressive and onerous sales tax on legal services which the MSBA, and its membership, very strenuously and actively opposed in order to protect clients' ability to afford essential legal services in times of personal crisis.

In addition, it is the present position of the MSBA that the \$75.00 proposed attorney registration fee increase for public defense funding is bad public policy because it imposes the burden of satisfying a constitutionally mandated societal obligation disproportionately on to the shoulders of one small segment of that society: attorneys – who make up less than ½ of 1 percent of Minnesota's total population. Therefore, and most importantly, the \$75.00 proposed attorney registration fee increase for public defense funding can be justified, if it can be justified at all, only as a stopgap measure to temporarily account for the extraordinary current economic conditions in this State and across the Nation.

It is, accordingly, the position of the MSBA that the \$75.00 proposed attorney registration fee increase for public defense funding could appropriately be enacted by this Court, but that this amendment to Rule 2A of Minnesota Rules of Supreme Court on Lawyer Registration should have a sunset provision of not more than two years. By adopting this position, the attorneys of Minnesota, as represented by the MSBA, are stepping up to the plate to partially cover, during a unique time in the economic history of our State and Nation, a constitutionally imposed obligation to provide criminal public defense services which is an obligation more directly and precisely belonging to all of society.

LSPC Petition:

With respect to the petition of the LSPC seeking an increase of \$25.00 to the attorney registration fee to pay for civil legal services for the indigent, it is the position of the MSBA that this fee increase should also appropriately be enacted by this Court but for distinct reasons.

The current attorney registration fee amount already includes \$50.00 which is allocated to pay for civil legal services for the indigent. Adding another \$25.00 to that amount will reflect, in part, that there has been no change to this portion of the attorney registration fee since it was first implemented by this Court, with the support of the MSBA, in 1997.

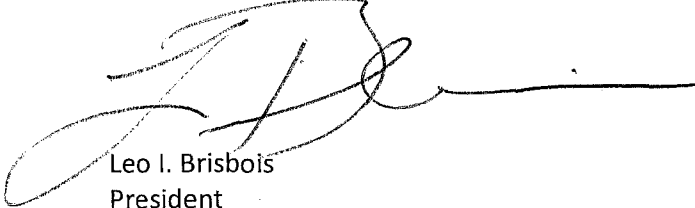
The MSBA believes that while providing access to justice for the indigent in both criminal and civil matters is important, the criminal public defense function, as noted above, is a constitutional societal obligation while, at present, providing civil legal representation for the indigent is not a similarly mandated constitutional

Letter from Leo I. Brisbois
July 9, 2009
Page 3

requirement. Accordingly, the MSBA, and its members, recognize their professional aspiration and responsibility to partner with society at large and more directly to, as a profession, provide support for access to justice for the indigent in the civil context. This recognition is based upon an appreciation for the legal profession's unique standing in society and because civil legal representation for the indigent is generally good public policy as a whole. It needs to be noted, however, that between the performance of significant pro bono legal services by countless attorneys in this State and a portion of the current attorney registration fee already being allocated to pay for civil legal services for the indigent, the legal profession in Minnesota has been and is more than holding up its end of this public/private partnership in the area of providing civil legal representation to the indigent.

It is for the foregoing reasons that the MSBA would at this time support this Court's granting of the petition of the LSPC for a limited increase in the attorney registration fee by \$25.00 to pay, in part, for civil legal services for the indigent.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'L. Brisbois', with a long horizontal line extending to the right.

Leo I. Brisbois
President
Minnesota State Bar Association

OFFICE OF
APPELLATE COURTS *h*

JUL 13 2009

FILED

STATE OF MINNESOTA
IN SUPREME COURT

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

C1-81-1206

Statement of the Legal Services Advisory Committee in Support of Petition

Submitted By:
Beverly Jones Heydinger
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, MN 55163-0620

Chair, Legal Services Advisory Committee

To The Supreme Court:

These comments are offered by the Legal Services Advisory Committee (LSAC) in support of the Petition of the Legal Services Planning Committee (Petition), filed with the Supreme Court on June, 4, 2009.¹

At its meeting on June 18, 2009, LSAC voted unanimously to support to raise the lawyer registration fee by \$25.00 per year to increase the funds available for civil legal services for low income Minnesotans, and to file a statement of support with the Supreme Court.

Pursuant to Minn. Stat. § 480.242, the Supreme Court has established LSAC and appointed its members to oversee distribution of funds to support civil legal services to low income people throughout the State. The funds come from two sources, legislative appropriation and a portion of the Attorney Registration Fee. In 2009, in accord with the statutory formula, LSAC distributed 85 percent of the funds, \$11,426,465, to qualified legal services programs funded by the Legal Services Corporation, and 15 percent of the funds (plus a carry-over from the prior year), \$2,159,320, to other qualified legal services through the LSAC grant process.

Because of the reduction in the legislative appropriation for the 2010-2011 biennium, the amount of money available for allocation will decrease by more than \$1 million. In contrast to the decrease in funds, as set forth in the Petition, the unmet need for civil legal services to low income people continues to rise. The economic recession coupled with increased costs to deliver services have further eroded efforts to meet that need.

Our democratic form of government is built on three important, separate powers: executive, legislative and judicial. The relative equilibrium of the three branches is the foundation of our democracy. Inherent in this balance is the principle inscribed over the entrance to the United States Supreme Court, "Equal Justice Under Law." If we deny persons access to our courts because they are poor, without regard for the merit or importance of their case, we undermine an essential cornerstone of our nation's government.

Lawyers are uniquely positioned to help assure that justice should not exceed the grasp of the poor. They know that an unrepresented person is at a distinct disadvantage – not knowing what court has jurisdiction, what documents to file, or how to marshal the facts and the law to pursue or defend a claim. Poor, unrepresented persons face additional barriers to access, such as lack of transportation, illiteracy, inflexible work hours, mental and physical disabilities, and unstable housing. Many are also immigrants or refugees attempting to understand an unfamiliar legal system. If low income people find that they do not

¹ See Order Establishing Deadline for Submitting Comments on Proposed Amendments to the Rules of the Supreme Court on Lawyer Registration, dated June 11, 2009.

have access to justice, their confidence in the laws that govern us will be significantly weakened.

We squarely stand in support of the Petition to increase the lawyer registration fee so that additional funds will be available to provide essential legal services and replace a portion of the decreased appropriation. While LSAC's members are aware that any fee increase may be difficult for individual attorneys to shoulder, the demonstrated need for funding, the benefit civil legal services to the judicial system and the necessity of providing equal access to justice far exceed the burden of the additional cost. As reflected in the preamble to the Minnesota Rules of Professional Conduct, quoted in the Petition, each lawyer has an obligation to improve access to the legal system. "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."

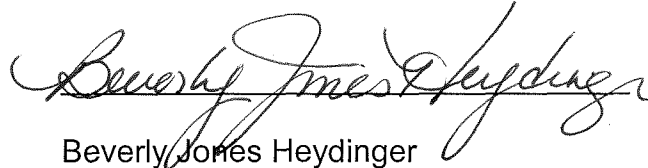
LSAC makes every effort to assure that the available dollars are prudently expended. Under LSAC's guidelines, eligible grantees must serve individuals and households with annual income that does not exceed two hundred percent of the Federal Poverty Guidelines. For 2009, the income limit was \$21,660 for an individual and \$44,100 for a household of four persons. In addition to the detailed information required in the application, each applicant receives a site visit and must submit a certified audit. LSAC's oversight assures that every allocated dollar is used to improve access to civil legal services throughout the state.

In reviewing this year's grant applications, LSAC considered whether the applicant would: increase the number of persons receiving legal assistance; leverage resources through innovative programs or approaches; increase the efficiency of services; provide reliable data regarding clients served, the level of service provided and the benefit of services provided; and promote statewide equity in access to services. Each grant applicant must fully explain the need for the services it offers, and the importance of those services to meet very basic needs of safety, housing, health care, and food for its clients.

Without the services that LSAC helps to fund, basic needs would not be met. Grants help to assure that persons with disabilities, children, immigrants, and the elderly understand their legal rights and are protected from victimization. Other grants support new technology to assist lawyers providing pro bono assistance and to aid low income people correctly submit their claims and defenses to the courts. The grant allocation process is not easy. The needs are great, and there are many dedicated legal services organizations that use creative, devoted staff and volunteers to maximize the impact of their programs. The grants can meet but a small percentage of the demand for critical legal services. Any increase in available funds will be prudently allocated to address that demand.

Although an increase in the Attorney Registration Fee will not be sufficient to address all of the unmet need for civil legal services, it will demonstrate the profession's ongoing commitment to accept a portion of the responsibility for ensuring access to justice. LSAC and its members urge you to grant the Petition and approve a \$25.00 per year increase in the Attorney Registration Fee to fund civil legal services for low income people.

Dated: July 13, 2009



Beverly Jones Heydinger
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, MN 55163-0620

*Chair, Legal Services Advisory
Committee*

Of Counsel to Mansfield, Tanick, & Cohen, P.A.

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July 10, 2009

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St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

JUL 13 2009

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Dear Mr. Grittner:

I enclose twelve copies of a letter on behalf of the Lawyer Trust Account Board in support of the Petition of the Legal Services Planning Committee to amend Rule 2A of the Minnesota Rules of the Supreme Court on Lawyer Registration requesting an increase in the registration fee to benefit civil legal services to low income and disadvantaged persons.

Thank you.

Very truly yours,

SCHAEFER LAW FIRM, LLC



Andrea F. Rubenstein, Of Counsel

Of Counsel to Mansfield, Tanick & Cohen, P.A.

*Andrea F. Rubenstein, Of Counsel
Direct Dial: 612.341.1253
Email: arubenstein@lschaeferlaw.com*

July 10, 2009

Mr. Frederick K. Grittner
Clerk of Appellate Courts
25 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Mr. Grittner:

I write this letter on behalf of the members of the Lawyer Trust Account Board in support of the proposed amendment to Rule 2A of the Minnesota Rules of the Supreme Court on Lawyer Registration. At a meeting of our Board on June 19, 2009, the members present unanimously voted to authorize me as then Chair (my term ended on July 1) to submit our comments in unconditional support of the petition of the Legal Services Planning Committee requesting an increase of \$25 in the registration fee to benefit civil legal services for low income and disadvantaged Minnesotans.

As the Court is well aware, the Lawyer Trust Account Board has worked closely with the Legal Services Advisory Committee to distribute our respective sources of funding to various legal services organizations around the state in a manner that, to the best of our ability, will maximize access to justice for the people we serve. In that process, we receive approximately thirty or more grant applications each year. Since I have had the honor to serve on LTAB, we have had, thanks to the addition to our able staff, access to detailed data on the need for legal services and the resources available to meet that need through the joint LSAC/LTAB application, by spending a significant amount of time in site visits to the individual programs, and through follow up study and questions. We have become quite familiar with the variety of programs and models in Minnesota. This process has not only enabled us to become well acquainted with the civil legal programs who come to us for support, but it has also given us a more global view of the state of civil legal services in Minnesota. Indeed, although we refer to the issue as access to justice, the information and knowledge we have gathered make it clear that we are really talking about legal representation to ensure survival – the preservation of safety and security and protection against the loss of basic needs, such as food, clothing, health care, education and dignity.

As a result of this study and involvement, we – as individuals and collectively as a board – can firmly attest to the marked contrast between the high quality of such programs and the lack of resources. We have great respect and admiration for the staff and volunteers we have come to know, both attorneys and non-attorneys, who provide legal representation and related services for comparatively little or no compensation. I offer one example, but there are many. One

Mr. Frederick K. Grittner
July 10, 2009
Page Two

program serving Southeast Asian refugees has the funding to pay its attorney only for about one and a half days a week. Nevertheless, she works nearly full time.

Our grant round three weeks or so ago was a particularly painful one. As interest rates have plummeted, the IOLTA funds available for distribution have dramatically decreased. We had to reduce our funding by 22.5 percent from our last round two years ago. Moreover, the cuts would have been much deeper had we not created a reserve for such a contingency two years ago. We are deeply concerned that if this economic picture does not change soon, the outlook will be even grimmer. IOLTA monies will no longer support legal services anywhere close to past levels of support. The budgets we studied were for necessities, not luxuries, and so the programs we have funded will be compelled both to do more for much less and to tighten their priorities to restrict the services they can offer, despite the fact that they already must limit services to the most needy of clients.

Our familiarity with the volunteer component of legal services suggests another point, as well. In past funding rounds, we had encouraged the various programs to seek out new volunteers and to expand the volunteer components of their programs. Our grantees responded admirably, despite the extra time and hard work it also takes to develop a volunteer program. While volunteer attorney programs do indeed help close the gap between need and resources, they will never make up for the lack of resources available to low income and disadvantaged persons in need of legal help.

I am personally proud to be an attorney practicing in a state in which the legal community gives of itself so generously to support civil legal services programs. Those of us who have been so deeply involved in working to provide access to justice are more than willing to pay a higher registration fee to support such programs and are confident that our view is the predominant one.

We therefore respectfully request that you grant the petition and thank you for your consideration of this matter.

Very truly yours,

SCHAEFER LAW FIRM, LLC



Andrea F. Rubenstein, Of Counsel

xc: Lawyer Trust Account Board

Michael Paymar
State Representative

District 64B
Ramsey County



Minnesota House of Representatives

COMMITTEES: CHAIR, PUBLIC SAFETY FINANCE DIVISION
PUBLIC SAFETY POLICY AND OVERSIGHT
CRIME VICTIM SUBCOMMITTEE
CIVIL JUSTICE
FINANCE

OFFICE OF
APPELLATE COURTS

July 10, 2009

JUL 15 2009

The Honorable Chief Judge Magnuson
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

FILED

Dear Judge Magnuson:

I am writing to request that the Supreme Court consider an increase in the lawyers' annual registration fee to \$100. In the Omnibus Public Safety Finance (SF 802) bill we suggested a fee increase up to \$75. As you know, the increase in the fee was to go to the Public Defender Account. As we were wrapping up the bill, we discussed the financial situation that Civil Legal Services was facing. While we didn't put specific language in our bill, we are encouraging consideration by the Court of Civil Legal Services request for an additional amount of \$25 to help them defray their shortfall.

As you know, the state is facing challenging economic times. It was not the legislature's preference to raise fees to offset the crippling budget cuts. However, taking a balanced approach, we included a mix of revenue along with budget cuts, and ultimately this approach outweighed these preferences.

Just as Senate File 802 set out our support for the Board of Public Defense, Legal Aid provides a unique and necessary service as well. As you know, Legal Aid succeeds in preserving the safety net for the most vulnerable of Minnesotans. It is this safety net that will be compromised should Legal Aid suffer the same cuts that many other state agencies are currently facing. In addition, I applaud Legal Aids efforts at accomplishing so much with so little and they deserve our support.

Because I recognize the efficient, effective and essential role played by each and every contributor to our criminal and civil justice system, an opportunity should be granted to Civil Legal Services to have their petition heard. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Michael Paymar".

Michael Paymar
State Representative
Chair, Public Safety Finance Committee



6/25/09

Frederick K. Grittner, Clerk of Appellate Courts
25 Dr. Rev. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

Re: Comments on Proposed Change in Rules of Lawyer Registration

JUL 13 2009

Statement in opposition to increase in lawyer registration fee.

FILED

The Supreme Court of Minnesota should not raise the fee for lawyer registration, nor should any amount of the registration fee be allocated to the BOPD.

It is not disputed by this writer that the Court has the authority to increase the lawyer registration fee as it determines is proper. The Court however, should find that this proposed increase is not a proper use of a registration fee. The creation of a fund to compensate public defenders is not necessary for the administration of justice, but is only expedient for those who have chosen to practice in this area of law.

There was widespread advocacy for increased funding for the Minnesota Courts during the recent legislative session. The Minnesota Legislature has chosen not to provide the funding that may be necessary for full protection of all indigent defendants and for the court to allocate increase fees will circumvent the intent of the legislature.

The BOPD failed in its mission to gain increased funding from the legislature, and is now pursuing a political agenda in the courts through this petition. This is a political issue, and one that should not be solved by the courts.

It is fundamentally unfair for the court to create system of welfare for lawyers who choose to practice in a given field, when those lawyers are supported by other lawyers who may or may not be in an equally precarious position of employment.

The BOPD has failed to demonstrate the dedication of registration funds is necessary to carry out its mission, and it has failed to show there are no other alternatives to this fee increase.

The Court has the authority to protect the rights of indigent defendants, even if protection of those rights will result in dismissal of cases. The Court should inform the public and the legislature of the need for additional funding, including through dismissal of cases due to lack of representation.

This should come down to an issue of appropriateness, fairness, and necessity. It is not appropriate for the Court to function as a tax-raising body when this is clearly the role for the legislature. This is a partisan political effort by a special interest group that was not successful in their tax-raising efforts in the proper forum of the Minnesota legislature, and now seeks to circumvent the legislature by making the Court the collector and distributor of what are essentially taxes.

It is not fair that in difficult economic times when employment as a lawyer is difficult to obtain, that one group of practitioners should be protected and guaranteed employment by the work of other attorneys. The administration of justice is an interest of every citizen. It is unfair to make lawyers solely responsible for funding government activities that are in the interest of everyone. Additionally, this fee will be a heavy burden on new lawyers who are the least likely to find employment.

Raising the fee is not necessary. The BPOD has failed to show there are no alternatives to raising the registration fee. Raising the fee is fundamentally unfair to all lawyers who have not chosen to practice in this field.

This writer respectfully asks the court to deny the petition to increase the attorney registration fee and dedicate additional funds to the BOPD.

I am a young attorney and I am concerned about retaliation for this letter. Therefore, I have chosen not to disclose my name.

Sincerely,

An attorney licensed in the State of Minnesota.

July 13, 2009

Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St Paul, MN 55155

OFFICE OF
APPELLATE COURTS

JUL 13 2009

FILED

Re: Proposed Lawyer Registration Rules Amendments

To Members of the Supreme Court:

These comments are submitted for your consideration regarding the proposed amendments to the Rules of the Supreme Court on Lawyer Registration.

As attorneys in the public sector, we question the request that every attorney in Minnesota, regardless of position or salary, contribute at the same level to address the public defender and civil legal services financial crisis. The plight of these programs is real and requires a creative solution and asking members of the bar to contribute in this way is a sound and well-meaning notion as is pointed out in the Petition of the Legal Services Planning Committee (*See pp: 7-9*). But to ask every member of the bar to equally bear the burden of the public defender and civil legal service financial crisis is unfair and unnecessary.

Average starting salaries for public sector employees are significantly lower than the starting salary for a mid-size to large firm employee. A few select public service attorney salaries are:

| | |
|--|------------------------------------|
| Court of Appeals Law clerk: | \$50,466.96 Annually |
| County Attorney 1 Ramsey County: | \$54,492.21 - \$81,063.42 Annually |
| Judicial Branch – Judicial Attorney 1: | \$45,602 - \$70,658 |

New and relatively new Public Defenders and Legal Services Attorneys are also paid within or below the ranges above. In contrast, according to articles in Minnesota Lawyer, the starting salary for large Minneapolis firms is \$120,000. While the salaries at small and medium firms are much lower, those attorneys have the option to work more to increase their income. Public sector attorneys, due to the budget crisis and the hiring freeze, continue to work more, but have salaries frozen at current levels.

Attorneys in the public sector are already “taxed” as we try to balance our personal budgets with 1/2 or 1/3 the salary of our private sector colleagues; and “taxed” by increasing workloads as our office budgets are cut and staffs shrink; it pushes the bounds of fairness to impose yet another “tax” on our ability to practice law.


The current lawyer registration fee system is already unfair as it makes no accommodation for those who choose a life of public service and therefore a reduced earning ability (unless you make less than \$25,000, which is unlikely even in your first year at most government jobs) and fewer financial perks, such as lawyer registration fees paid by employers. This fee increase affects public sector attorneys

disproportionately by again asking those who already have a limited earning capacity to pay the same as those whose ability to earn is limited only by the number of hours they can bill in a day.

Although working in the public sector is a choice, most of us who choose this life see it as a calling. And while we feel a deep sense of pride in our work and satisfaction in the role we play in bringing justice to all Minnesotans, we rarely forget that we (even those of us with more than a decade of experience) earn less than the average first year associate.

Our work as public sector attorneys is critical to the state; we prosecute, defend, and support the work of the judicial branch behind the scenes in big and small ways, significant and subtle ways. While many private sector attorneys are likely facing financial crises similar to ours, we can only speak for ourselves. And we are not asking to be exempt from our share in the responsibility to ensure access to justice we are simply asking that we share it proportionally and fairly.

Sincerely,


Karen Kampa Jaszewski


Kimberly A. Larson


Deborah Blee

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TELEPHONE (952) 546-6000

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OFFICE OF
APPELLATE COURTS

JUL 10 2009

*ALSO ADMITTED IN WISCONSIN
**ALSO ADMITTED IN NORTH DAKOTA

FILED

July 9, 2009

Minnesota Supreme Court
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

To the Honorable Judges of the Minnesota Supreme Court:

I am writing in regard to the proposed \$100 increase in attorneys' annual licensing fee for 2010 which the Supreme Court is going to review.

This proposed increase recently passed by the legislature for the Court to assess licensed attorneys actively engaged in the practice of law is seriously flawed. It is asking attorneys through their professional license to fund or subsidize programs; this is compared to taxation without representation. These proposed funding costs should be borne by the State and other subdivisions.

The annual attorney fee collected now allows for the advisory committee to make grants to legal services programs for the indigent. This just seems to be more of piling-on of the hard-working attorneys in Minnesota, especially during these hard economic times. It would seem that some of the stimulus money could be also directed if there is indeed a need for additional legal aid and public defense.

At the present time I am seeing no more compelling reason for this increase than the other sectors of the government which have strapped up their bootlaces and have made do.

I respectfully request that proposed fee increase be not enacted.

Very truly,


John D. Mariani

jmariani@borkonlaw.com

JDM/mkh

RICHARD J. COHEN

Senator, 64th District
591 S Cretin Avenue
Saint Paul, MN 55116
Phone: (651) 699-4476

121 State Capitol Building
75 Rev. Dr Martin Luther King, Jr Blvd
St. Paul, MN 55155-1606
Phone: (651) 296-5931



Senate

State of Minnesota

OFFICE OF
APPELLATE COURTS

JUN 24 2009

FILED

June 24, 2009

Fred Grittner
Minnesota Supreme Court
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Attorney Registration Fee Petitions, File C1-81-1206

Dear Mr. Grittner:

I am writing to request that the Supreme Court give serious and favorable consideration to the request to increase our lawyers' annual registration fee by \$25 to allow for the additional and needed support for civil legal services in Minnesota.

I have been involved for a number of years in seeking avenues for civil legal services, and I am sure my belief is shared by members of the court that our system of civil legal services and those involved with the various programs are superlative. However, by its nature there has always been great difficulty in securing its funding.

During this year's legislative session, we had difficulty in increasing the base appropriation for civil legal services. Obviously, as the Court is aware we were facing significant problems relative to funding basic court services, much less other services. It was very difficult to find additional means to support civil legal services, and the one time funding provided last year will obviously go away on June 30, 2009.

There was a request to increase the Attorney Registration Fees by \$75 in order to offset some of the cuts proposed by the Board of Public Defense. I would hope that the Court would find a consistency in providing some similar support for civil legal services. I recognize that the proposed \$25 increase certainly does not keep civil legal services fully funded, but it does provide some additional support in a very difficult budget and economic environment.



As an active practitioner who pays the Attorney Registration Fee, I certainly feel that my initial \$25 would be money very well spent to maintain a program that has provided great service and justice to thousands of Minnesotans.

Thank you very much for your consideration of this request.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'R. J. Cohen', with a long horizontal flourish extending to the right.

Richard J. Cohen
Chair, Senate Finance Committee

LINDA HIGGINS
Majority Whip
Senate District 58
328 State Capitol
75 Rev Dr. Martin Luther King, Jr Blvd
St Paul, MN 55155-1606

Phone: (651) 296-9246
Fax: (651) 296-6511
E-Mail: sen linda higgins@senate mn



Senate

State of Minnesota

OFFICE OF
APPELLATE COURTS

JUN 17 2009

FILED

June 15, 2009

Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Frederick Grittner:

I am writing to encourage the Court's favorable consideration of the petition to increase lawyers' annual registration fee by \$75 to support funding for the Board of Public Defense, in addition to the \$25 increase sought by civil legal services. The Board of Public Defense plays an essential role in our justice system, providing services in every Minnesota courthouse and handling over 179,000 cases per year.

Currently the Board of Public Defense has caseloads that nearly double American Bar Association and Board Weighted Caseload Standards. Last year part time defenders provided 44,000 uncompensated hours in order to keep the court system running, the equivalent of 22 FTE attorneys. For FY 2010, the Board is instituting a hiring freeze for attorney staff. If the fee is not approved the Board of Public Defense will lay off 30-40 attorney staff or roughly 10% of their staff. These layoffs will be on top of the 50 attorney positions that were lost last year.

Because we recognize the efficient, effective and essential role played by the Board of Public Defense, I encourage your favorable consideration of the petition.

Sincerely,

A handwritten signature in cursive script that reads "Linda Higgins".

State Senator Linda Higgins
Chair, Senate Public Safety Budget Division
District 58
Representing North and Downtown Minneapolis



LINDA HIGGINS

Majority Whip
Senate District 58
328 State Capitol
75 Rev Dr. Martin Luther King, Jr Blvd
St Paul, MN 55155-1606

Phone: (651) 296-9246
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E-Mail: sen.linda.higgins@senate.mn



Senate

State of Minnesota

OFFICE OF
APPELLATE COURTS

JUN 17 2009

FILED

June 15, 2009

Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

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Because we recognize the efficient, effective and essential role played by the Board of Public Defense, I encourage your favorable consideration of the petition.

Sincerely,

State Senator Linda Higgins
Chair, Senate Public Safety Budget Division
District 58
Representing North and Downtown Minneapolis



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