

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8002 (formerly C9-81-1206)

OFFICE OF
APPELLATE COURTS

MAR 2 2011

FILED

**ORDER EXTENDING INCREASE IN
LAWYER REGISTRATION FEES**

By order filed November 4, 2009, we granted requests from the Board of Public Defense and the Legal Services Planning Committee to increase temporarily the annual lawyer registration fee to provide additional funding for representation of indigent criminal defendants and civil litigants. We increased the annual lawyer registration fee by \$100 per year, allocating \$75 of the increase to the Board of Public Defense to provide additional funding for legal representation of its clients and \$25 to the Legal Services Advisory Committee to be distributed by the Committee for civil legal services for low-income and disadvantaged Minnesotans. We approved the increase reluctantly, to meet exceptional financial circumstances, and its duration was limited, expiring with the fees due and payable by July 1, 2011.

The Board of Public Defense has filed a petition with this court requesting that the \$75 temporary increase in the annual lawyer registration fee allocated to the Board be extended indefinitely, and the Legal Services Planning Committee has filed a petition requesting that the \$25 temporary fee increase allocated for civil legal services be made permanent. In orders filed September 23 and November 24, 2010, we invited comments and scheduled a hearing on the petitions for December 14, 2010.

The exceptional financial circumstances facing the courts and the State in general that we acknowledged and responded to in our November 4, 2009, order have not abated. Indeed, the economic challenges facing the courts and the State for the upcoming biennium have, if anything, worsened. For the reasons stated, and based on the authority recognized, in our November 4, 2009, order we extend the fee increases.

In doing so, we caution the Legislature and the Governor, our coordinate branches of government that are responsible together for creation of the State's biennial budgets, that we will not continue, beyond this second temporary fee increase, to rely on lawyer registration fees to fund the constitutional obligation of the State to provide defense counsel for indigent criminal defendants. We call on the Legislature and the Governor to fulfill their constitutional responsibilities to provide adequate funding for the public defense system, with the knowledge that the additional temporary funding provided by this fee increase will not be extended beyond the July 2013 fees provided for in this order.

Pursuant to the inherent authority of the court,

IT IS HEREBY ORDERED THAT:

1. The petition of the Legal Services Planning Committee to incorporate into Rule 2 of the Rules of the Supreme Court on Lawyer Registration the previous temporary increase of \$25 in the annual lawyer registration fee allocated to the Legal Services Advisory Committee be, and the same is, granted, and the attached amendments to Rule 2 are prescribed and promulgated to be effective with the lawyer registration fees due and payable by October 1, 2011.

2. The petition of the Board of Public Defense to extend indefinitely the previous temporary increase of \$75 in the annual lawyer registration fee allocated to the Board be, and the same is denied, but the increase is extended for one additional temporary period, effective with the lawyer registration fees due and payable by October 1, 2011, and expiring with fees due and payable by July 1, 2013.

3. With the amendment to Rule 2 promulgated by this order, the 2-year extension of the temporary fee increase for the Board of Public Defense, and the expiration of the 2-year hiatus in collection of the portion of the lawyer registration fees allocated to the Client Security Board, commencing with fees due and payable by October 1, 2011, the annual lawyer registration fee shall be \$329 or such lesser sum as is set forth below:

Active Status – Income Less than \$25,000	\$292.50
Active Status – Lawyers on Full-Time Military Duty	\$172.00
Active Status – Lawyers on Full-Time Military Duty – Income Less than \$25,000	\$136.00
Active Status – Lawyers Admitted Fewer Than Three Years	\$152.00
Active Status – Lawyers Admitted Fewer Than Three Years – Income Less Than \$25,000	\$134.00
Inactive Status – Out-of-State	\$272.00
Inactive Status – Out-of-State – Income Less Than \$25,000	\$235.50
Inactive Status – Minnesota	\$272.00
Inactive Status – Minnesota – Income Less Than \$25,000	\$235.50
Inactive Status – Retired	Exempt

Inactive Status – Permanent Disability	Exempt
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While this order is in effect, these annual registration fees are in lieu of the fees set forth in Rule 2 of the Rules of the Supreme Court on Lawyer Registration. The \$75 fee increase allocated to the Board of Public Defense remains temporary only, and upon the expiration of this temporary fee increase, the annual registration fees shall revert to the amounts set forth in Rule 2, as amended by this order.

4. The additional funds generated by the temporary \$75 fee increase shall be allocated to the Board of Public Defense; the remaining funds generated by the attorney registration fees shall be allocated as provided in Rule 2, as amended by this order.

Dated: *March 2, 2011*

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENTS TO RULES OF THE SUPREME COURT
ON LAWYER REGISTRATION

(Additions indicated by underlining; deletions indicated by strikethrough)

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RULE 2. REGISTRATION FEE

A. Required Fee.

In order to defray the expenses of examinations and investigation for admission to the bar and disciplinary proceedings, to defray the expenses of administering continuing legal education, to provide an adequate client security fund, to help fund legal services programs, and to help fund a lawyers assistance program, each lawyer and each judge must pay to the Lawyer Registration Office an annual registration fee.

B. Active Statuses.

Each lawyer and judge must pay an annual registration fee of ~~\$229~~254 or such lesser sum as is set forth in the following sections.

1. Active Status - Income Less Than \$25,000.

A lawyer or judge on active status who certifies that the lawyer's or judge's gross income from all sources, excluding the income of a spouse, is less than \$25,000 per year must pay an annual registration fee of ~~\$204~~226.

2. Active Status - Lawyers on Full-Time Military Duty.

A lawyer or judge on full-time duty in the armed forces of the United States must pay an annual registration fee of ~~\$118~~131.

3. Active Status - Lawyers on Full-Time Military Duty - Income Less Than \$25,000.

A lawyer or judge on full-time duty in the armed forces of the United States who certifies that the lawyer's or judge's gross income from all sources, excluding

the income of a spouse, is less than \$25,000 per year must pay an annual registration fee of ~~\$93~~103.

4. Active Status - Lawyers Admitted Fewer Than Three Years.

A lawyer or judge who has been admitted to practice law fewer than three years in each and every licensing jurisdiction, including Minnesota, must pay an annual registration fee of ~~\$108~~120.

5. Active Status - Lawyers Admitted Fewer Than Three Years - Income Less Than \$25,000.

A lawyer or judge who has been admitted to practice law fewer than three years in each and every licensing jurisdiction, including Minnesota, and certifies that the lawyer's or judge's gross income from all sources, excluding the income of a spouse, is less than \$25,000 per year must pay an annual registration fee of ~~\$95.50~~106.

C. Inactive Statuses.

1. Inactive Status - Out-of-State.

A lawyer or judge who files with the Lawyer Registration Office on or before the date the lawyer's registration fee is due an affidavit stating that the lawyer or judge (i) is a permanent resident of a state other than Minnesota, (ii) is currently in good standing, (iii) does not hold judicial office in Minnesota, and (iv) is not engaged in the practice of law in Minnesota must pay an annual registration fee of ~~\$190~~211.

2. Inactive Status - Out-of-State - Income Less Than \$25,000.

A lawyer or judge who files with the Lawyer Registration Office on or before the date the lawyer's registration fee is due an affidavit stating that the lawyer or judge (i) is a permanent resident of a state other than Minnesota, (ii) is currently in good standing, (iii) does not hold judicial office in Minnesota, (iv) is not engaged in the practice of law in Minnesota, and (v) certifies that the lawyer's

or judge's gross income from all sources, excluding the income of a spouse, is less than \$25,000 per year must pay an annual registration fee of ~~\$165~~183.

3. Inactive Status - Minnesota.

A lawyer who files with the Lawyer Registration Office on or before the date the lawyer's registration fee is due an affidavit stating that the lawyer (i) is a resident of the State of Minnesota, (ii) is currently in good standing, (iii) does not hold judicial office in this state, and (iv) is not engaged in the practice of law in this state must pay an annual registration fee of ~~\$190~~211.

4. Inactive Status - Minnesota - Income Less Than \$25,000.

A lawyer who files with the Lawyer Registration Office on or before the date the lawyer's registration fee is due an affidavit stating that the lawyer (i) is a resident of the State of Minnesota, (ii) is currently in good standing, (iii) does not hold judicial office in this state, (iv) is not engaged in the practice of law in this state, and (v) certifies that the lawyer's or judge's gross income from all sources, excluding the income of a spouse, is less than \$25,000 per year must pay an annual registration fee of ~~\$165~~183.

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D. Allocation of Fees.

Fees paid pursuant to this rule are allocated according to the following schedule:

(1) Payments of ~~\$229~~254 are allocated as follows:

- a. \$23 to the State Board of Law Examiners;
- b. \$6 to the State Board of Continuing Legal Education;
- c. \$122 to the Lawyers Professional Responsibility Board;
- d. ~~\$0~~12 to the Client Security Fund;
- e. ~~\$50~~75 to the Legal Services Advisory Committee; and
- f. \$16 to the Lawyer Trust Account Board for a lawyers assistance program.

- (2) Payments of \$~~204~~226 are allocated as follows:
- a. \$23 to the State Board of Law Examiners;
 - b. \$6 to the State Board of Continuing Legal Education;
 - c. \$122 to the Lawyers Professional Responsibility Board;
 - d. \$~~0~~12 to the Client Security Fund;
 - e. \$~~25~~47 to the Legal Services Advisory Committee; and
 - f. \$16 to the Lawyer Trust Account Board for a lawyers assistance program.
- (3) Payments of \$~~190~~211 are allocated as follows:
- a. \$23 to the State Board of Law Examiners;
 - b. \$6 to the State Board of Continuing Legal Education;
 - c. \$83 to the Lawyers Professional Responsibility Board;
 - d. \$~~0~~12 to the Client Security Fund;
 - e. \$~~50~~71 to the Legal Services Advisory Committee; and
 - f. \$16 to the Lawyer Trust Account Board for a lawyers assistance program.
- (4) Payments of \$~~165~~183 are allocated as follows:
- a. \$23 to the State Board of Law Examiners;
 - b. \$6 to the State Board of Continuing Legal Education;
 - c. \$83 to the Lawyers Professional Responsibility Board;
 - d. \$~~0~~12 to the Client Security Fund;
 - e. \$~~25~~43 to the Legal Services Advisory Committee; and
 - f. \$16 to the Lawyer Trust Account Board for a lawyers assistance program.
- (5) Payments of \$~~118~~131 are allocated as follows:
- a. \$23 to the State Board of Law Examiners;
 - b. \$5 to the State Board of Continuing Legal Education;

- c. \$24 to the Lawyers Professional Responsibility Board;
 - d. ~~\$50~~63 to the Legal Services Advisory Committee; and
 - e. \$16 to the Lawyer Trust Account Board for a lawyers assistance program.
- (6) Payments of ~~\$93~~103 are allocated as follows:
- a. \$23 to the State Board of Law Examiners;
 - b. \$5 to the State Board of Continuing Legal Education;
 - c. \$24 to the Lawyers Professional Responsibility Board;
 - d. ~~\$25~~35 to the Legal Services Advisory Committee; and
 - e. \$16 to the Lawyer Trust Account Board for a lawyers assistance program.
- (7) Payments of ~~\$108~~120 are allocated as follows:
- a. \$23 to the State Board of Law Examiners;
 - b. \$6 to the State Board of Continuing Legal Education;
 - c. \$26 to the Lawyers Professional Responsibility Board;
 - d. ~~\$0~~12 to the Client Security Fund;
 - e. ~~\$25~~37 to the Legal Services Advisory Committee; and
 - f. \$16 to the Lawyer Trust Account Board for a lawyers assistance program.
- (8) Payments of ~~\$95.50~~106 are allocated as follows:
- a. \$23 to the State Board of Law Examiners;
 - b. \$6 to the State Board of Continuing Legal Education;
 - c. \$26 to the Lawyers Professional Responsibility Board;
 - d. ~~\$0~~12 to the Client Security Fund;
 - e. ~~\$12.50~~23 to the Legal Services Advisory Committee; and
 - f. \$16 to the Lawyer Trust Account Board for a lawyers assistance program.

CONCURRENCE

DIETZEN, Justice (concurring).

I agree with the majority opinion that the fee increases fall within our inherent authority to regulate the practice of law as expressed in our order filed November 4, 2009. And I agree with the majority to authorize fee increases for the Legal Services Planning Committee. I write separately to express my serious misgivings over granting the petition of the Board of Public Defense (Board) to provide additional funding for two more years.

My concerns with the Board's petition are two-fold. First, the Office of the Legislative Auditor studied the Board in its report, Public Defender System, which was released in February 2010. The report states, among other things, that:

Although we identified numerous flaws in the public defender's office weighted caseload data, a quantified measure of attorney caseloads is essential to the discussion of public defender workloads on a day-to-day basis. Consistent trend data on public defender staffing levels were not available for a long term analysis, but we used what data the public defender's office could provide to calculate workloads per attorney [full-time equivalent], as shown in Table 3.1.

The Board has acknowledged that it has not yet resolved the "identified flaws" in its weighted caseload data. In my view, it is incumbent upon the Board to resolve this issue.

More importantly, the Board has not taken a hard look at improving the way that it manages its operations and processes its cases. As a result of the recent economic recession and the ensuing budget shortfall, units of government, like the private sector, have been forced to dramatically cut costs of operation and significantly improve the manner in which they do business, including the use of new technology. To date, the

Board has made cuts to its operations, but has not made significant changes to improve the efficiency in the way it manages its operations and processes its cases including the use of new technology. Absent significant changes, I see no reason to grant the Board's request.

In my view, the court has a responsibility to make sure the Board takes a hard look at how it manages its operations and processes its cases, and make the necessary changes. But I also recognize the importance of the Board's mission of providing representation to indigent defendants. Consequently, I reluctantly agreed to give it two more years to make significant changes in the way it manages its operations and processes its cases.

CONCURRENCE

STRAS, Justice (concurring).

For the reasons pointed out by Justice Page in his dissents to today's order and the November 4, 2009, order granting in part the petitions of the Board of Public Defense, I have serious doubts about our authority, inherent or otherwise, to order a fee increase for a service that the State of Minnesota is constitutionally obligated to provide to its citizens. As Justice Page stated in his November 4, 2009, dissent, it is "a tax, plain and simple," and this court has no authority to impose a tax. *See Reed v. Bjornson*, 191 Minn. 254, 257-58, 253 N.W. 102, 104 (1934) ("[P]ower of taxation . . . reposes in the legislature, except as it is limited by the state or the national constitution."). Nevertheless, our inherent authority to authorize the fee increase was settled by a majority of this court when we temporarily granted the fee increase in 2009.

I therefore reluctantly join the order temporarily granting the fee increase through the July 2013 fees. Critical to my decision is that we have drawn a line in the sand in today's order indicating that it is not the responsibility of lawyers alone to disproportionately fund a core, constitutionally-mandated service of government through a fee that was designed solely to regulate our profession. Our order states that "we will not continue, beyond this second temporary fee increase, to rely on members of the bar to fund the constitutional obligation of the State to provide defense counsel for indigent criminal defendants." Accordingly, the "funding provided by this fee increase will not be extended beyond the July 2013 fees provided for in this order." Because of these conditions, I join today's order.

DISSENT

PAGE, Justice (dissenting).

There are “certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.” *Powell v. Alabama*, 287 U.S. 45, 68 (1932) (quoting *Holden v. Hardy*, 169 U.S. 366, 389 (1898)).

For all of the reasons set forth in my dissent to the court’s November 4, 2009, order, I again respectfully dissent. In addition, I write to emphasize two points made in my November 2009 dissent and to make an observation. As I pointed out in my previous dissent, our court has no authority, inherent or otherwise, to assess members of the bar a fee for the purpose of funding Minnesota’s public defense system. We did not have the authority then and, notwithstanding reliance on the court’s inherent authority in 2009, we do not have it now. The second point to be emphasized is equally clear. The obligation to provide for and fund our system for indigent defendant defense is the obligation of the state. *See Gideon v. Wainwright*, 372 U.S. 335, 343 (1963). As such, that obligation should not be disproportionately borne by any one segment of our state’s population. It is the obligation of all segments of our population. It is the price each of us must pay to live in a civilized society.

Now the observation. Every criminal defendant is entitled to a fair trial. *See United States v. Wade*, 388 U.S. 218, 226-27 (1967). Fundamental to a fair trial is the defendant’s right to the effective assistance of counsel. *See id.*; *see also Gideon*, 372 U.S. at 342-43. By underfunding our public defense system, we not only call into

question the fairness of criminal trials in this state, we tear at the fabric of civilized society. As the United States Supreme Court noted in *Powell*, “a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense.” 287 U.S. at 59. To deny that right “is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob.” *Id.*