

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

SEP 23 2010

FILED

C1-81-1206

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

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

IT IS FURTHER ORDERED that:

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

Dated: September 23, 2010

BY THE COURT:


Lorne S. Gildea
Chief Justice

No.

**STATE OF MINNESOTA
IN SUPREME COURT**

In re:

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

PETITION OF BOARD OF PUBLIC DEFENSE

Board of Public Defense
John Stuart, State Public Defender
Attorney License #0106756
331 Second Ave. S. #900
Minneapolis, Minnesota 55401
(612) 279-3510

Board of Public Defense
Kevin Kajer, Chief Administrator
331 Second Ave. S. #900
Minneapolis, Minnesota 55401
(612) 279-3508

Attorney for Petitioner

No. _____

STATE OF MINNESOTA

IN SUPREME COURT

In re:

Proposed Amendment of Minnesota Rules on Lawyer Registration

PETITION OF MINNESOTA BOARD OF PUBLIC DEFENSE

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME

COURT:

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

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

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

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

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

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

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

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

101

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

System.

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

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

Dated: August 26, 2010

Respectfully submitted,
BOARD OF PUBLIC DEFENSE

BY _____

John Stuart
Attorney for Petitioner, #0106756
State Public Defender
331 Second Avenue. S. Suite 900
Minneapolis, MN 55401
(612) 279-3510
And

BY _____

Kevin Kajer
Chief Administrator,
Board of Public Defense
331 Second Avenue. S. Suite 900
Minneapolis, MN 55401
(612) 279-3508

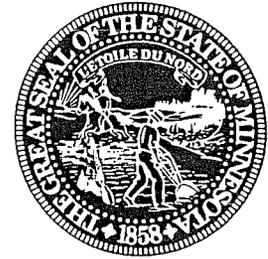


Fred T. Friedman
Chief Public Defender

**STATE OF MINNESOTA
OFFICE OF THE SIXTH JUDICIAL DISTRICT
PUBLIC DEFENDER**

1400 Alworth Building
306 West Superior Street
Duluth, Minnesota 55802

ADM 10-8002



OFFICE OF
APPELLATE COURTS

Telephone (218) 733-1027

Fax (218) 733-1034

November 16, 2010

NOV 22 2010

FILED

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

RE: Petition of Board of Public Defense

Dear Mr. Grittner:

Please consider my request to make an oral presentation to the Honorable Supreme Court on the request by the Board of Public Defense to continue the \$75.00 per year increase of the lawyer registration fee and to allocate this money to that Board.

I have been a Public Defender in the State of Minnesota since the first day of February, 1973. I worked full time from 1973 to 1977, part time with a private practice from 1977 to 1992 to support my family, then full time from 1992 to now. I have been the Chief Public Defender of the Sixth District since 1986 and, therefore, the most senior of our ten Chief Public Defenders.

I make my comments regarding extending the \$75 fee being fully aware of the Court's Order in November of 2009 and the memorandums and opinions that are part of that Order. Three facts are indisputable: 1) The Minnesota Board of Public Defense has seen our appropriations slashed several times in recent years and therefore the number of lawyers employed to represent indigent criminal defendants has been gutted. 2) The quality of service provided has declined as Chief Justice Magnuson predicted on several occasions preceding the latest budget cuts. 3) We have tried and continue to work with the Minnesota Legislature to do everything we can to persuade them and the citizens, bench, and bar of Minnesota that a quality public defender program is required under both Minnesota and United States Constitutions, and that there is no justice if the poorest among us face loss of liberty and all its collateral consequences without effective defense and adequate time and resources to prepare and present an effective defense.

The above facts cannot possibly be in dispute. The issue is, is this a matter for the Legislature to correct despite the fact they have not corrected it to date, or is this an issue

Frederick Grittner
RE: Petition of Board of Public Defense
November 16, 2010

Page 2

that the Minnesota Supreme Court, in its supervisory responsibilities and its role in guaranteeing protection under the laws and equal access to justice under the laws, is required to step in and guarantee that the right to counsel and other due process rights are something more than carvings on courthouses?

Because of the gutting of our resources, Public Defenders are facing scheduling and adequacy nightmares throughout the state. We are asked to be prepared before we possibly can be prepared. We are asked to go forward before we even acquire the discovery that we are entitled to under Rule 9 of the Minnesota Rules of Criminal Procedure and under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. We are asked to go forward before we have had an opportunity to meet with their client, either because the client is in a remote jail or the client has not been able to find transportation to get in to see his lawyer. We are asked to go forward before we are prepared to proceed because we are working on other cases and responding to other demands of our trade.

Often times - not occasionally, but often times - Public Defenders are directed to be in two different courthouses and in two different counties at the same time. Many courts are sympathetic to our situation, but some are not. Lawyers feel under indescribable stress trying to determine which judge to please by attending that courthouse and which judge to displease by not attending that courthouse. We have lawyers who are sick, we have lawyers who are stressed out, we have lawyers who are shortchanging their families, and most importantly we have lawyers who are shortchanging their clients because there are 65 fewer defenders than there were 30 months ago. If this \$75 fee is not continued, we will lay off more lawyers and we face telling our clients, both juveniles and adults, that their lawyers have been laid off and their cases and justice will be delayed and denied.

The number of Public Defenders who have faced ethical complaints has risen. Many of these complaints are without merit, but if a response is demanded we have no choice but to respond. This Supreme Court has ruled several times that we must take all cases. The Rules of Professional Responsibility say otherwise. I have personally represented clients who faced ethical complaints because they could not make an appearance because they were somewhere else doing the public's business. This needs to end. I have seen bailiffs and clerks walk up to defenders while the defender was addressing the court and ask when they are going to be done because they are needed in another courtroom. I have been asked by defenders who work for me which judge they should please and which courthouse they should go to. I am fortunate enough to work in a district where we work together to solve these problems. Unfortunately, this is not the case everywhere, but even the best methods of working together with the closest cooperation do not create more public defenders or permit us to appear in two places at the same time or to give attention

Frederick Grittner
RE: Petition of Board of Public Defense
November 16, 2010

Page 3

to two clients who are in different courthouses at the same time. Only more money and the return of our lost defender positions accomplish that. Our Constitutions require no less.

We simply cannot do the work without additional staff, just as nobody would claim that the Minnesota Judiciary could do its work with fewer judges, both on the trial level and the appellate level. Nonetheless, Public Defenders have seen the number of lawyers cut by 15%. We cannot assure the people of Minnesota that we are committed to justice and to the oaths we took when we continue to slash the ranks of those who defend the poorest and least influential among us.

On December 14, 2010, I would like the opportunity to bring these issues to the attention of the Honorable Supreme Court for their consideration. Please consider this my request to speak to the Supreme Court Judges regarding this important subject.

Sincerely,



Fred T. Friedman
CHIEF PUBLIC DEFENDER
(218) 733-1027

FTF:kpm



OFFICE OF
APPELLATE COURTS

NOV 22 2010

FILED

**STATE OF MINNESOTA
STATE PUBLIC DEFENDER**

John M. Stuart
State Public Defender

331 Second Avenue South
Suite 900
Minneapolis, MN 55401

(612) 349-2565
FAX (612) 349-2568
john.stuart@pubdef.state.mn.us

ADM 10-8002

November 18, 2010

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

RE: Petition of Board of Public Defense

Dear Mr. Grittner:

Please allow me to speak at the hearing on December 14. If possible I would like to speak before other public defenders who have asked to be included, so that I can provide some statewide context for their presentations on the need for the registration fee portion of our budget as it affects their Judicial District or the Appellate Office.

First, I am concerned about our clients' Constitutional right to the effective assistance of counsel. The Office of the Legislative Auditor studied our agency in depth as the basis for its report, Public Defender System, released in February, 2010. The report paints a bleak picture of the time that public defenders have available to prepare their cases. If the registration fee revenue is lost we lose 40 MORE lawyers from a system in which, OLA found:

“Public defender workloads are too high, resulting in public defenders spending limited time with clients, difficulties preparing cases, and scheduling problems that hinder the efficient operation of criminal courts.” (Major Finding # 1.)

The Auditors' interviews with justice system partners showed that “workloads were having a noticeable impact on public defenders' ability to adequately and ethically represent their clients.” Our managers across the state report an unprecedented level of ethics complaints. A District Chief Public Defender I met with yesterday is working on three that are currently pending against his staff.

My second concern is with the overloaded staff. Here are attached 3 pages from the February report. You will see—on page 38—that our lawyers described feelings of being “underwater,” “bruised,” and “beat up.” Public defenders’ health is affected, in some cases, in addition to their clients’ welfare and their ethical standing in the profession.

Following the publication of the Legislative Auditor’s report, in fact, due to shortages in the state’s current fiscal year budget, public defense funding was reduced and we lost additional lawyer positions. We now have lost over 60 attorney FTE positions from the 423 FTE lawyers we had entering 2008.

Moreover, as criminal law practice becomes increasingly complex, Minnesota needs to have a public defender workforce that can stay on the job long enough to develop skill and expertise. A personnel system based, as ours increasingly has been, on early retirements, lay-offs, and lengthy unpaid leaves, is not going to be able to handle criminal cases with DNA and other sophisticated kinds of evidence, with any competence.

Finally, without any intention on our part, public defense has become the weak link in the criminal justice system. The Legislative Auditor reports that:

“Judges and court administrators responding to our surveys reported that problems scheduling public defenders for hearings and trials was the most significant cause of delays...”

Since 2008 the Board of Public Defense has lost more than 1/7 of our lawyers. The loss of the revenue from the registration fee would necessitate 40 more positions being lost, compounding all the difficulties described here, not only for our clients and staff, but for the operation of Minnesota’s system of justice.

Respectfully submitted,

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

John Stuart

Delivery of Public Defender Services

Because of its legal mandate, the public defender system has no control over the volume of cases it must handle. Caseload size is determined by external factors, such as the level of crime; state sentencing policies; and the practices of judges, prosecutors, and police. On a day-to-day basis then, workloads for public defenders are controlled largely by the number of defenders and support staff available. With this in mind, we evaluated the size and nature of public defenders' current workloads and the impact of workloads on the way public defenders do their work, case outcomes, and court efficiency.

PUBLIC DEFENDER WORKLOADS

Although we identified 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 (FTE), as shown in Table 3.1.

Based on these data, survey results, site visit observations, and the many interviews conducted as part of our site visits, we found that:

- **Public defender workloads are too high and exceed state and national standards.**

State and national standards call for public defenders to carry no more than 400 case units per year. As shown in Table 3.1, Minnesota's weighted caseloads per attorney far exceed that standard. For example, the statewide average weighted caseload per public defender FTE was 779 at the end of fiscal year 2009. Weighted caseloads in the districts ranged from a low of 688 in the seventh district (10 counties in central Minnesota) to 860 in the ninth district (17 counties in the northwest).

When caseloads exceed these national and state standards, it is more difficult for public defenders to adequately prepare their cases. In order to effectively represent their clients, attorneys need sufficient time to interview clients and witnesses, perform legal research, draft motions, request investigative and expert services, and otherwise prepare for hearings and trials. Public defenders and others described the current environment as one of practicing triage, moving from crisis to crisis rather than thoughtfully managing cases. Insufficient case preparation can result in mistakes. In one district, a public defender's inattention led to a client charged with a misdemeanor spending 60 days (the entire sentence

Table 3.1: Number of Full-Time-Equivalent Attorneys and Case Units per Attorney, 2007 to 2009

District	Number of Full Time Equivalent (FTE) Attorneys and Weighted Case Units Per FTE					
	2007		2008		2009	
	FTE	Case Units per FTE	FTE	Case Units per FTE	FTE	Case Units per FTE
First	40	688	40	732	35	739
Second	48	761	49	691	42	755
Third	31	689	31	691	27	745
Fourth	118	789	107	721	104	819
Fifth	24	652	24	682	20	717
Sixth	24	643	24	654	20	712
Seventh	38	752	39	674	35	688
Eighth	14	661	14	656	12	786
Ninth	37	779	35	834	32	860
Tenth	<u>56</u>	811	<u>60</u>	724	<u>49</u>	823
Total	429	748	422	714	376	779

NOTES: FTE counts are snapshots as of May 2007, May 2008, and May 2009. FTE data for earlier years were not available. Case units per FTE were calculated using weighted case units for the previous calendar year. District FTEs may not sum to total due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of public defender case management data.

We observed public defenders working under intense time pressures.

if found guilty of the crime) in jail waiting for trial. Smaller errors are more common, such as a public defender or client failing to appear in court after a re-scheduling.

Criminal court stakeholders we surveyed reported that public defender workloads have increased since 2002, as shown in Table 3.2. Roughly 60 percent of public defenders, public defender staff, and district court judges responding to our surveys reported that public defenders' workloads were much higher in 2009 than 2002. County court administrators and county prosecutors also reported in our surveys that public defender workloads had increased, but to a lesser extent. One court administrator commented:

I think the public defenders that we have work very hard and do the best they can with the excessive volume of cases per attorney. However, this does not always translate into quality representation because the PD's office is grossly understaffed. The long-term impact of being in triage mode could have tragic results.

During our site visits, we observed public defenders under such time pressures that they often had about 10 minutes to meet each client for the first time, evaluate the case, explain the client's options and the consequences of a conviction or plea, discuss a possible deal with the prosecuting attorney, and allow the client to make a decision on how to proceed. One public defender showed us her schedule, which had a criminal sexual conduct trial on the same

Table 3.2: Opinions of the Change in Public Defender Workloads from 2002 to 2009

Change in Public Defender Workloads Since 2002	Public Defenders (N=225)	Public Defender Staff ^a (N=76)	District Court Judges (N=145)	County Court Administrators (N=54)	County Prosecutors (N=100)
Workload is much lower	0%	0%	0%	0%	4%
Workload is somewhat lower	3	0	2	6	8
Workload has not changed	8	3	10	11	8
Workload is somewhat higher	28	26	24	39	62
Workload is much higher	59	66	61	35	15
Don't know	2	5	2	9	3

NOTE: Only respondents who reported working with public defenders since 2002 answered this question.

^a Nonattorney staff include investigators, paralegals, legal secretaries, dispositional (sentencing) advisors, and office managers.

SOURCE: Office of the Legislative Auditor, analysis of public defender, public defender's office staff, district court judge, county court administrator, and county prosecutor surveys, 2009.

day she was scheduled to staff an arraignment calendar to pick up new cases. Another public defender was not available to cover the arraignment calendar for her. She anticipated having to ask the trial judge to adjust the trial proceedings so that she could handle arraignments for a half a day. She also told us she was so overbooked that she routinely scheduled up to five trials in a day, anticipating that most would settle. One judge commented that such over-booking is extremely stressful and that he could not imagine having to prepare for several trials at once. Another judge commented on our survey:

I get repeated complaints [from defendants] that the public defenders don't return calls and the pre-trial is the first time they have met with the public defender. Although some of the clients would complain no matter how good the services were, the complaints are legitimate. The returned calls don't occur because [public defenders] are over worked, not because they don't work hard.

A court administrator shared this example in her survey response:

There are myriad of continuance requests. An example: [We have] a two-hour omnibus hearing this Monday. A public defender's request [to continue] came in at 3:45 today, Friday.

There are 16 officers subpoenaed to testify. The defendant is in custody. The public defender has not been able to get prepared.

Many public defenders and judges are concerned about increased stress and declining morale among public defenders due to high workloads. Public defenders we interviewed reported that, in order to provide competent representation, they donated their personal time to visit clients in jail, return phone calls, and otherwise prepare their cases.¹ They described feeling “underwater,” “bruised,” “beat up,” and being treated as “the help.” Separately, managers described instances in which they found public defenders showing signs of great emotional stress.

One public defender commented on our survey:

There aren't enough attorneys, there's not enough time to meet with my clients. My schedule is so crazy with three counties that my clients end up waiting forever. I'm not notified when I've got in-custody clients waiting for a long time for a hearing because MY schedule is a problem. I often don't have time to prepare for important hearings, so I'm constantly requesting continuances and then the clients' cases get dragged on and on.

We also found that:

- **Many factors influence public defender workloads.**

The most immediate cause of high public defender workloads is staffing cuts sustained in 2008. However, other factors such as the severity of the consequences of crimes and challenging clients affect the amount of attorney time required per case.

State legislation in recent years has increased the severity of consequences for certain crimes. When the consequences for a crime are more severe, clients are less likely to settle, and it becomes more essential for public defenders to provide zealous advocacy to have charges dropped or to avoid conviction. As illustrated in Table 3.3, these legislative policy changes have taken various forms. For example, revised sentencing guidelines have increased presumptive sentences for many crimes. The Legislature has recategorized some minor crimes to higher level offenses, and created “enhanceable” offenses. These are offenses for which additional convictions for the same offense carry a higher penalty. For example, successive domestic assaults are treated more seriously than the first incident, so public defenders should spend more time fighting the first conviction, even when the initial sentence is minimal.

Staffing cuts sustained in 2008 were the most immediate cause of high public defender workloads.

¹ Part-time public defenders reported consistently working more than their contracted hours, and full-time public defenders told us they were working uncompensated overtime as well. The chief administrator reported that excess hours among part-time staff rose from 28,000 hours in fiscal year 2000 to 44,000 in fiscal year 2008. We did not attempt to verify that information. The chief administrator said the office did not track uncompensated time among full-time public defenders.



**OFFICE OF THE
MINNESOTA APPELLATE PUBLIC DEFENDER**

David W. Merchant
Chief Appellate Public Defender

540 Fairview Avenue North
Suite 300
St. Paul, MN 55104
651-201-6700 FAX: 651-643-2148

Steven P. Russett
Cathryn Middlebrook
Michael F. Cromett
Managing Attorneys

OFFICE OF
APPELLATE COURTS

NOV 22 2010

FILED

November 22, 2010

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

Dear Mr. Grittner:

I respectfully request to make an oral presentation to the Minnesota Supreme Court on December 14, 2010, in support of the Minnesota Board of Public Defense's ("BOPD") Petition to Continue the Attorney Registration Fee to Provide Funding for Public Defense. If granted permission, I would join other representatives of the BOPD in making this presentation.

Specifically, I would like to address the impact that the reduction of three full-time equivalent attorney positions from the Office Appellate Defender in 2008 has had on the Office's ability to represent our clients in criminal appeals to the Minnesota Court of Appeals and the Minnesota Supreme Court, as well as in post-conviction proceedings, supervised release revocation hearings, and review of end of confinement review committee hearings for persons who are ranked as level 2 or 3 sex offenders. In addition, I would forecast what impact any future reduction of staff would have on the operations of the Appellate Office and its ability to represent our clients.

Thank you for considering this request.

Very truly yours,

A handwritten signature in black ink that reads "David W. Merchant". The signature is written in a cursive style and is positioned above the typed name and title.

David W. Merchant
Chief Appellate Public Defender

DWM:ame

ASSISTANT
PUBLIC DEFENDERS
PAUL G. THOMPSON
DIANA M. SWEENEY
KRISTINE W. CANNON
LAURIE BAUERLY
LAYNE CHIODO



STATE of MINNESOTA
NINTH JUDICIAL DISTRICT

Public Defense

CHIEF PUBLIC DEFENDER
KRISTINE KOLAR

INVESTIGATOR
PAMELA GREGG
PARALEGAL
PENNY DOWNEY
DISPOSITIONAL ADVISOR
SHEILA FONTAINE

619 Beltrami Avenue NW, Suite 240, Bemidji, MN 56601
Telephone (218) 755-4333 (800) 366-2623 FAX (218) 755-4335

November 22, 2010

ADM10-8002

OFFICE OF
APPELLATE COURTS

NOV 23 2010

FILED

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

RE: Petition of Board of Public Defense

Dear Mr. Grittner,

Please consider my request to make an oral presentation to the Honorable Supreme Court on the request by the Board of Public Defense to continue the \$75.00 per year increase of the lawyer registration fee and to allocate this additional money to that Board.

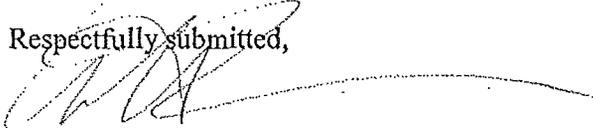
I am the Chief Public Defender for the Ninth Judicial District, the largest geographical district in Minnesota. Since FY 2007, I have lost 12% of the attorney positions in my District. As a result of this loss, the remaining attorney staff has had ever increasing caseloads, as have Assistant Public Defenders across the State. What I would like to illustrate to this Court, however, is how this reduction of staff has resulted in a dramatic increase in time spent by my lawyers behind the wheel of a car, travelling to court, rather than appearing in court or working with clients toward the resolution of cases. We do not have the luxury of spreading the loss of attorney staff among the remaining assistant public defenders in the area when there are no remaining public defenders. In FY 2010, the employees of the Ninth Judicial District drove over 101,300 miles at state expense of roughly \$89,800.00. They spent approximately 1,690 hours on the road, away from clients, their offices and the courts.

On December 14, 2010, I would like the opportunity to explain to this Court why it is necessary to continue the \$75.00 increase to the lawyer registration fee and to allocate the additional money raised to the Board of Public Defense. In greater Minnesota, any further reduction of staff will only increase the time lawyers are paid for driving to and from court, rather than for working with clients and appearing in court resolving cases.

Mr. Frederick Grittner
November 22, 2010
Page 2

This shift in Public Defender time away from court and client interaction does nothing to resolve the crisis of Public Defense, nor the crisis faced by the criminal justice system as a whole, as it now stands in Minnesota due to lack of resources.

Respectfully submitted,

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

Kristine A. Kolar
Chief Public Defender
Ninth Judicial District

Original plus 12 copies

ASSISTANT
PUBLIC DEFENDERS
PAUL G. THOMPSON
DIANA M. SWEENEY
KRISTINE W. CANNON
LAURIE BAUERLY
LAYNE CHIODO



STATE of MINNESOTA
NINTH JUDICIAL DISTRICT
Public Defense
CHIEF PUBLIC DEFENDER
KRISTINE KOLAR

INVESTIGATOR
PAMELA GREGG
PARALEGAL
PENNY DOWNEY
DISPOSITIONAL ADVISOR
TIMOTHY MOUNTAIN

619 Beltrami Avenue NW, Suite 240, Bemidji, MN 56601
Telephone (218) 755-4333 (800) 366-2623 FAX (218) 755-4335

To: Kevin Kajer
From: Kris Kolar
Date: August 3, 2010
Re: Koochiching and Roseau county vacancies

Thank you for meeting with my management staff regarding the vacant assistant public defender positions in the far northern counties of the Ninth Judicial District. The current staffing crisis has resulted from the loss of two $\frac{3}{4}$ time positions in Koochiching County (Shermoen and Biggins) and one full time position in Roseau county (Hardwick). As we discussed, I currently have no assistant public defenders located north of Thief River Falls, Bemidji or Grand Rapids. This uncovered area is larger than several states, and houses four separate, distant courthouses. In order to cover these vacancies with existing personnel, assistant public defenders appearing in northern Minnesota have had to drive extremely long distances in order to appear in court and/or meet with clients. For example, the assistant public defender covering Koochiching and Lake of the Woods counties has to drive from Grand Rapids to International Falls and Baudette, respectively. It is 120 miles ONE WAY from Grand Rapids to International Falls. It is 146 miles ONE WAY from Grand Rapids to Baudette. Although it is "only" 70 miles from International Falls to Baudette normally, road construction this summer makes it a 143 mile trip with the detour. Similarly, court in Roseau and Hallock is now covered from Thief River Falls. It is 65 miles from Thief River Falls to Roseau, 72 miles to Hallock.

It is my understanding that the Board of Public Defense has authorized the filling of vacant position on a temporary, contract basis. Although this is good news, it does not provide real relief for the personnel situation I have described in the Ninth District. Specifically, the positions I need filled occur in communities where there are no attorneys who would be willing and/or available to retain on contract. I am forced to look at covering these counties from a distance, and our temporary contracts do not allow for sufficient mileage reimbursement to make contracts a reasonable solution. Additionally, upon brainstorming potential candidates for these positions, we discovered that those we contacted were unwilling to make such a commitment on a temporary basis: they were not willing to give up stable employment for the future possibility that a temporary position with the Board of Public Defense would become permanent.

As such, I am asking for permission to post two non-temporary $\frac{3}{4}$ time attorney positions in the Ninth Judicial District. These positions would be primarily responsible for providing coverage in the Koochiching/Lake of the Woods county area and the Thief River Falls/Roseau/Hallock areas. I am requesting permission to post these positions no later than September 15, 2010. At least one of these positions can be funded, in large part, with the savings in mileage/hotel and other expenses currently incurred by the long distance coverage presently in place.

Please get back to me at your earliest convenience.

Thank you in advance for your cooperation.

Jim Austad – Primary Attorney – Koochiching & LOW Counties
Mileage FY 2011 to date

July

3594 Miles = 65.35 Hours

August

2775 Miles = 50.45 Hours

8/2	GR to Falls to GR	240 Miles (Personal Car)	
8/3	GR to Falls to GR	240 Miles (State Car)	
8/6	GR to Falls to GR	240 Miles (Personal Car)	
8/9	GR to Falls	127 Miles (State Car)	
8/11	Falls to Baudette to GR	208 Miles (State Car)	
8/12	Bemidji (BCA)	148 Miles (State Car)	
8/12	GR to Brainerd – DNA	90 Miles (Personal Car)	
8/14	Brainerd to GR	90 Miles (Personal Car)	
8/17	GR to Falls to GR	240 Miles (Personal Car)	
8/18	GR to Falls to GR	240 Miles (Personal Car)	
8/19	GR to St. Cloud to GR	296 Miles (Personal Car)	
8/22	GR to St. Paul – CJI	188 Miles (Personal Car) -	Personal not reimbursed
8/25	St. Paul to GR – CJI	188 Miles (Personal Car) -	Personal not reimbursed
8/29	GR to Falls Hotel	120 Miles (Personal Car)	
8/30	Falls to GR	120 Miles (Personal Car)	

September

2389 Miles = 43.44 Hours

9/9	GR to Falls to GR	240 Miles (Personal Car)	
9/14	GR to Falls	125 Miles (State Car)	
9/15	Falls to Baudette Baudette to GR	141 Miles (State Car) 133 Miles (State Car)	
9/21	GR to Falls Hotel	136 Miles (State Car)	
9/22	Falls to Baudette to GR	213 Miles (State Car)	
9/23	GR to Falls to GR to St. Paul to GR	624 Miles (State Car)	

September (cont.)

9/26	GR to Falls	120 Miles (State Car)
9/28	Falls to Baudette	96 Miles (State Car)
9/29	Baudette to GR	155 Miles (State Car)
	GR to Burnsville	195 Miles (State Car)
9/30	Burnsville to GR	211 Miles (State Car)

October

2308 Miles = 41.97 Hours

10/1	GR to St. Cloud to GR	290 Miles (State Car)
10/5	GR to Falls	124 Miles (State Car)
10/6	Falls to GR	121 Miles (State Car)
10/11	GR to Falls	120 Miles (Personal Car).
10/12	Falls to Baudette to GR	290 Miles (Personal Car)
10/12	GR to Brainerd (DNA)	90 Miles (Personal Car)
10/14	Brainerd (DNA)	
10/15	Brainerd to GR (DNA)	90 Miles (Personal Car)
10/19	GR to Falls [to GR?]	243 Miles (State Car)
10/20	GR to BJI to GR	147 Miles (State Car)
10/24	GR to Falls	120 Miles (Personal Car)
10/26	Falls to Baudette	69 Miles (Personal Car)
10/27	Baudette to GR	146 Miles (Personal Car)
10/28	GR to Moorhead to Elbow Lake to GR	458 Miles (State Car)

Paul Thompson - conflict attorney Koochiching & LOW counties
Travel from Jan 2010 to date

6/22	Bemidji to Falls	226 miles
9/14	Bemidji to Falls & return	226 miles
9/15	Bemidji to Baudette & return	208 miles
10/11	Bemidji to Falls & return	226 miles
10/27	Bemidji to Falls & return	226 miles
11/15	Bemidji to Falls & return	226 miles

NINTH JUDICIAL DISTRICT TRAVEL
ONE-WAY

	Ada	Aitkin	Bagley	Baudette	Bemidji	Brainerd	Crookston	Grand Rapids	Hallock	International Falls	Mahnomen	Park Rapids	Red Lake Falls	Roseau	Thief River Falls	Walker	Warren	Warroad
Ada	*****	184	72	193	98	154	36	169	110	209	29	96	53	136	72	108	67	158
Aitkin	184	*****	149	199	123	30	210	53	284	173	156	112	202	256	216	87	241	234
Bagley	72	149	*****	127	26	126	61	97	135	137	44	54	53	131	67	62	92	153
Baudette	193	199	127	*****	104	204	165	146	133	69	171	157	140	57	121	140	146	35
Bemidji	98	123	26	104	*****	100	87	71	161	113	70	53	79	139	93	36	118	139
Brainerd	154	30	126	204	100	*****	183	83	257	198	128	82	175	239	189	64	214	239
Crooksto	36	210	61	165	87	183	*****	158	74	197	54	114	25	108	44	123	31	130
Gr Rpds	169	53	97	146	71	83	158	*****	232	120	141	92	150	203	164	63	189	181
Hallock	110	284	135	133	161	257	74	232	*****	201	128	188	92	76	73	197	43	98
I' Falls	209	173	137	69	113	198	197	120	201	*****	180	166	190	126	186	150	215	104
Mahnom	29	156	44	171	70	128	54	141	128	180	*****	67	47	125	61	79	85	147
Pk Rpds	96	112	54	157	53	82	114	92	188	166	67	*****	107	185	121	28	145	192
RL Falls	53	202	53	140	79	175	25	150	92	190	47	107	*****	83	19	116	49	105
Roseau	136	256	131	57	139	239	108	203	76	126	125	185	83	*****	64	175	89	22
TR Falls	72	216	67	121	93	189	44	164	73	186	61	121	19	64	*****	130	29	86
Walker	108	87	62	140	36	64	123	63	197	150	79	28	116	175	130	*****	154	175
Warren	67	241	92	146	118	214	31	189	43	215	85	145	49	89	29	154	*****	110
Warroad	158	234	153	35	139	239	130	181	98	104	147	192	105	22	86	175	110	*****

NOV 23 2010

FILED

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
FAX (320) 762-8863

November 19, 2010

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

ADMID-8002

RE: Supreme Court File No. C1-81-1206
Comments on Proposed \$75 Increase in Lawyer Registration Fee

To the Honorable Members of the Minnesota Supreme Court:

I am writing to provide my opposition once again to the Petition filed by the Board of Public Defense seeking to continue the \$75 attorney registration fee for an indefinite period. I wrote last year asserting my opposition to this proposal. I believe the dissent of Justice Page, (supported by Justice Meyer and now Chief Justice Gildea) hit the nail on the head. Charging a group of private citizens under the guise of a registration fee is, plain and simple, a tax, which is not constitutional. It is a violation of both the equal protection and separation of powers provisions in the Constitution. The order issued last year cited no authority whatsoever for this action, except the inherent authority of the Supreme Court. The Supreme Court has no authority to impose a tax on a private group of citizens to fund a general governmental obligation which is required by the Minnesota State Constitution. The Supreme Court should also not be involved in making policy decisions or in assisting the legislature by raising revenue to support a mandated governmental obligation. I find it quite repugnant that the legislature has simply neglected to perform its duty of funding this constitutional obligation. It is distressing to me that the Supreme Court has chosen to become involved in this process at all, since you may likely be asked to hear an inadequate representation case filed on behalf of a criminal defendant (represented by a public defender) in the near future.

The dissent filed by Justice Page last year should become the majority opinion this year! I believe his position is supported by the vast majority of judges and attorneys throughout this state.

Very truly yours,

A handwritten signature in black ink, appearing to read "David R. Battey".

David R. Battey
Judge of District Court