



MEMORANDUM

TO: Honorable Justices of the Wisconsin Supreme Court

FROM: Marcie Rainbolt, Government Affairs Associate

DATE: April 30, 2018

SUBJECT: Opposition to Supreme Court Rule Petition 17-06

The Wisconsin Counties Association (WCA) respectfully requests that the Honorable Justices of the Wisconsin Supreme Court deny petition 17-06 which would amend Supreme Court Rule 81.02. The petition would make the following changes:

1. Increase the hourly rate for court-appointed attorneys from \$70 per hour to \$100 per hour and index hourly compensation rates annually for inflation.
2. Any compensation less than \$100 per hour would be deemed unreasonable.
3. Prohibit flat fee contracting.

In 2010, the Wisconsin Supreme Court considered a similar petition on Supreme Court Rule 81.02. At that time, the Court did its due diligence in reviewing the petition and received stakeholder feedback in a public hearing. Ultimately, the Court rendered a decision denying the petition noting, “we agree that this is an area of shared authority for the court and legislature, but we decline at this time to use our administrative regulatory process to effectively circumvent a legislative enactment.” We agree with the decision and rationale of the Court in 2010 and request the Court again deny this petition.

Currently, Wisconsin counties pay \$70 per hour for court-appointed attorneys. Increasing the hourly rate to \$100 would be financially devastating for cash-strapped counties struggling to provide state-mandated services in an era of growing service demands and reduced revenues. WCA recognizes the many challenges posed by the status quo, most notably the difficulty in obtaining counsel for individuals in a timely manner. However, this petition does not address the main source of concern, which is the rate statutorily set by the Wisconsin State Legislature for the State Public Defenders (SPD) office. To raise the hourly rate for the counties but hold the SPD harmless at \$40 per hour will only exacerbate the financial burden placed on Wisconsin’s 72 counties.

When a SPD attorney cannot be obtained to represent an indigent individual, judges have ordered counties to assume responsibility and provide counsel at the rate of \$70 per hour. According to the Sixth Amendment Center: Justice Shortchanged Part II, Wisconsin is the only state in the country with a state-funded, state-administered public defense system that requires counties to pay a higher rate for attorneys when the state cannot obtain counsel. If the petition before the court is approved, increasing the rate to \$100 per hour would likely result in more difficulty for the SPD in securing representation as attorneys may wait for a county-required appointment at the higher compensation rate. Furthermore, this petition's scope goes beyond SPD cases and has implications for those who require counsel but do not meet SPD income requirements and those in need of Guardian Ad Litem (GAL) services. Both of these examples are paid for entirely at county expense.

In addition to imposing new financial requirements on counties, this petition also preempts a county's ability to employ flat fee contracting for legal services. In many counties, flat fee contracting is utilized to obtain a GAL to serve the county. This petition would no longer allow counties to contract at a flat fee and would force counties to pay \$100 per hour. At a time when counties are continuously asked to do more with less, this petition would unfairly and unnecessarily tie the hands of locally-elected officials when deciding the most efficient and effective way to ensure counsel is available for their residents.

WCA respectfully requests the denial of petition 17-06. WCA recognizes and appreciates this petition's intended goal of ensuring available counsel, but unfortunately the petition will not address the majority of challenges faced by the SPD in assigning counsel and will instead place a financial burden on county government that is unworkable. Counties believe the ultimate remedy to address current issues with SPD- and court-appointed counsel must involve the Wisconsin State Legislature and its sole authority to appropriate funds.