


MEMORANDUM

FILED
OCT 19 2010
CLERK OF SUPREME COURT
OF WISCONSIN

TO: Honorable Justices of the Wisconsin Supreme Court

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate 

DATE: October 19, 2010

SUBJECT: Opposition to Petition to Amend Supreme Court Rule 81.02

The Wisconsin Counties Association (WCA) respectfully requests that the Wisconsin Supreme Court deny the petition to amend Supreme Court Rule 81.02 that asks the court to:

1. Increase the hourly rate of compensation for court-appointed lawyers from \$70 to \$80;
2. Indexes the rate to the Consumer Price Index;
3. Specifies that the payment of an hourly rate less than the rate set forth in SCR 81.02 (1) for legal services rendered pursuant to appointment by the State Public Defender under Wis. Stat. s.977.08 is unreasonable.

Simply stated, this petition clearly has financial implications for county government that we simply cannot afford.

When an individual does not qualify for State Public Defender representation or is in need of a guardian ad litem or adversary counsel, counsel is appointed at county expense. In 2008, counties spent approximately \$6 million on court-appointed counsel for indigent defendants and over \$11 million on guardians ad litem. The 14% increase in payments proposed in the petition will cost counties approximately \$2.4 million annually.

Counties do receive reimbursement from the state for guardian ad litem costs through the Guardian Ad Litem Payment Program. The program was started in the 1993-95 biennium. Annual reimbursement under the program was \$4,738,500 and has not been increased since the program was created (not even an annual increased based on CPI). This funding amount was permanently reduced by one percent during 2009-2011 state biennial budget deliberations. No similar program exists to reimburse counties for indigent defense costs.

Counties may recoup their costs from individuals who received court-appointed counsel at county expense. However, as costs increase, the ability to collect decreases.

While the current rule does allow for contracting for the provision of legal services at less than the stated hourly rate, many of the contracts entered into by counties are based on a percentage of the hourly rate; therefore, an increase in the hourly rates will lead to increases in contract amounts.

Timing

The timing of this petition could not be worse for county government. Counties provide a vast array of services to the citizens of our state. In these tough economic times, the demand for services has significantly increased, especially in our county health and human services departments.

The state legislature has imposed two separate yet distinct limits on the ability of counties to raise funds to provide services to our state's most vulnerable populations. The first limit, enacted during the 1993-95 state biennial budget, caps property tax rates at the December 1992 level (tax rate limit). The second limit caps the amount a county may levy to no greater than an amount equal to the prior year's levy plus three percent or the county's growth in equalized value due to new construction (whichever is greater). All but nine counties had a decrease in their 2010 equalized values.

In addition to limits on our ability to raise revenue, counties received significant funding cuts during 2009-2011 state biennial budget deliberations. One percent cuts were applied to most state appropriations. Other programs received cuts in excess of one percent. Examples of programs with funding cuts include the Children and Families BCA, the Income Maintenance Administration Allocation, Circuit Court Support and GAL Reimbursement programs, Probation and Parole payments.

Over the next few weeks, counties will be adopting their budgets for 2011. Many county budgets contain cuts in services, including employee layoffs. As difficult as county 2011 budgets are, counties are already predicting "a budget year like no other" for 2012. There is no room for mid-year budget adjustments. If this Court were to make any changes to SCR 81.02, our counties request that the changes be effective no sooner than January 1, 2012.

The situation facing the state of Wisconsin as the 2011-2013 budget process begins is bleak. Budget deficit amounts are estimated at over \$3 billion. The road to balancing the state budget will be long. If the last state budget provides any insight into the

coming budget process, counties can anticipate additional cuts in state aid with no decrease in service expectations.

In addition, the Wisconsin State Legislature modified the standards utilized to determine eligibility for state public defender services during 2010 with an effective date of July 1, 2011. The funding for this change has yet to be allocated. With a \$3 billion budget deficit on the horizon, funding for this change is in jeopardy, let alone identifying a funding source to double the rates paid to private bar attorneys accepting SPD appointments.

Forum

It is clear from reading the petition that the petitioners' focus is on the the rates paid by the State Public Defender to the private bar attorneys that accept SPD appointments. No reference is made to any other case types; however, the petition affects all cases in which an attorney is appointed by the court.

There is clearly a difference in the rates set for payment to private attorneys accepting SPD cases by Supreme Court Rule and Wisconsin State Statute. Increasing the rate in SCR 81.02 will not settle the dispute. The discrepancy existed in 1994 when the rate was increased from \$60 to \$70 and the discrepancy will exist regardless of the Court's ruling on the petition.

The one thing we know for certain is if this petition is adopted, the cost to counties for court-appointed counsel, indigent counsel cases or not, will increase. Counties do not have the means to provide an increase at this time. Therefore, counties respectfully request that you deny the petition.

Thank you for considering our comments.