



Wisconsin State Public Defender

Green Bay Trial Office

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APR 17 2018

**CLERK OF SUPREME COURT
OF WISCONSIN**

Clerk of the Supreme Court
PO box 1688
Madison, WI 53701

Re: Petition #17-06 seeking to amend SCR 81.02

Wisconsin Supreme Court Justices,

I write to comment about petition #17-06 which seeks to amend SCR 81.02. I have been an assistant state public defender staff attorney for ten years in Green Bay, WI. As you all are probably aware, the staff attorneys handle heavy caseloads. We are collectively responsible for the intake process in the criminal courts. The lawyers in our office are able to observe how efficiently the courts operate at the beginning stages of criminal cases. In Brown County the State Public Defender staff attorneys handle about 60% of the criminal cases in the county with the balance of the cases being appointed to the private bar.

When a criminal case is charged the defendant is either brought to court in custody where he or she will have contact with the public defender's office or summonsed into court and the defendant will have to seek out aid from the public defender's office. In any event the staff attorneys and the support staff see on a daily basis what type of delay there is appointing counsel for the accused.

I can only speak with any authority about the trends in the ability of our office to appoint cases to the private bar in Brown County. Ten years ago the appointment process was rather smooth. Some cases, or some defendant's cases were somewhat more difficult to find counsel because of the nature of the charge or the personality of the defendant, but all cases were appointed to a lawyer within a few weeks. Over the years, the delays have become longer, and the number of attorneys turning the cases down has increased. Our office tracks which attorneys have been offered any particular State Public Defender case and whether they intend to accept the appointment. In the recent past – perhaps the last 24 months or so. I have seen the number of cases where a person has requested counsel, qualifies for Public Defender representation, but there is no lawyer willing to take the case increase dramatically. In some instances,

the courts have begun asking indigent defendants if they would like to opt in to a Dean appointment arrangement with the county so that their case can move forward.

In some instances, I have seen cases where our office has approached over 60 attorneys with no interested lawyers. Recently I have seen simple, straight forward misdemeanor defendants still not have counsel for 3 months. Certainly more serious cases will always be more difficult to appoint, but the run-of-the-mill criminal cases should not be in that category. If these cases are nearing impossibility to appoint, there is something seriously wrong with the appointment system.

I would like to add that the support staff (legal secretaries) at our office commonly ask the attorneys who are turning down cases the reason for doing so. The most common answer is the \$40/hr. rate. The second most common answer is that they are too busy with other cases, or a combination of the two. The public defender's office in Green Bay has resorted to requesting attorneys from the far reaches of the state to travel here and represent – counties that are in excess of 100 miles away. While I admire these attorneys who are essentially donating their time to their clients and to the state government by accepting a financial loss, I can't but conclude that this will necessarily affect the quality of the representation for these indigent defendants.

The problem seems to only be getting worse. The intake process in Brown county works like this: The commissioner's courtroom handles all criminal cases until 1. Counsel is located (unless waived); 2. Through the preliminary hearing. The exception to this is if counsel cannot be located. Increasingly, I am seeing criminal defendants – some in custody, some out – appearing before the circuit court judges alone, without a lawyer. Invariably, the court will take a short break to contact the public defender's office to see who has been appointed. No one.

Sincerely,

Attorney Eric Maciolek

/s/ Eric Maciolek