

STATE OF MINNESOTA

IN SUPREME COURT

C1-81-1206

**ORDER TEMPORARILY INCREASING  
LAWYER REGISTRATION FEES**

The Board of Public Defense and the Legal Services Planning Committee have filed petitions with this court seeking an increase in the annual lawyer registration fee. The Board of Public Defense requests the court to increase the annual lawyer registration fee by \$75.00 per year and allocate this money to the Board to provide additional funding for legal representation of its clients. The Legal Services Planning Committee requests the court to increase the amount of the annual lawyer registration fee allocated to the Legal Services Advisory Committee by \$25.00 per year, the additional funds to be distributed by the Legal Services Advisory Committee for civil legal services for low-income and disadvantaged Minnesotans. In an order filed on June 11, 2009, the court invited written comments on the proposed amendments. The comment period has now expired.

The court has reviewed the petitions and the comments received and is advised in the premises.

Pursuant to the inherent authority of the court,

IT IS HEREBY ORDERED THAT:

1. The petitions are granted effective for annual registration fees due and payable by October 1, 2009 and expiring with annual registration fees due and payable by

July 1, 2011. Effective commencing with fees due and payable by October 1, 2009 and expiring with fees due and payable by July 1, 2011, the annual lawyer registration fee shall be \$317 or such lesser sum as is set forth below:

Active Status – Income Less than \$25,000	\$280.50
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	\$140.00
Active Status – Lawyers Admitted Fewer Than Three Years – Income Less Than \$25,000	\$122.00
Inactive Status – Out-of-State	\$260.00
Inactive Status – Out-of-State – Income Less Than \$25,000	\$223.50
Inactive Status – Minnesota	\$260.00
Inactive Status – Minnesota – Income Less Than \$25,000	\$223.50
Inactive Status – Retired	Exempt
Inactive Status – Permanent Disability	Exempt

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 fee increase is temporary only, and upon the expiration of this fee increase, the annual registration fee shall revert to the amounts set forth in Rule 2.

2. For registration fees due and payable by October 1, 2009, payment of the temporary fee increase imposed by this order is deferred and the increase shall be payable along with the registration fees due and payable by October 1, 2010.

3. Seventy-five percent of the additional funds generated by this temporary fee increase shall be allocated to the Board of Public Defense; the remaining twenty-five percent of the additional funds generated by this temporary fee increase shall be allocated to the Legal Services Advisory Committee.

Dated: November 4, 2009

BY THE COURT:

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Eric J. Magnuson  
Chief Justice

STATE OF MINNESOTA  
IN SUPREME COURT  
C1-81-1206

MEMORANDUM

Magnuson, C.J.

We make this temporary fee increase reluctantly, in response to the exceptional financial circumstances currently facing the courts and the state in general, and in hopes that these circumstances will not continue indefinitely. Accordingly, we have expressly limited the duration of the fee increase, which will expire by the terms of our order at the end of the current biennium.

We have carefully considered the source of our authority to take this action, and are confident that this fee increase falls within our inherent authority to regulate the practice of law. In 1961, we imposed a registration fee on lawyers to defray costs of the administration of the attorney licensure system, citing “the inherent power of this court to regulate the practice of law in this state.” Order (Minn. Oct. 5, 1961) at 1, *available at* <http://mncourts.gov/filebrowse/?folderpath=AdministrationFiles> (follow link to Lawyer Registration and locate by date). We subsequently increased the registration fee and allocated the increase to fund civil legal services, again acting solely based on that inherent authority. *See Promulgation of Amendments to the Rules of the Supreme Court for Registration of Attorneys*, No. C9-81-1206 (Minn. Feb. 6, 1997) at 1-2, *available at* <http://mncourts.gov/filebrowse/?folderpath=AdministrationFiles> (follow link to Lawyer Registration and locate by date). Not only did we believe we had the inherent authority

to impose that fee, we concluded that it was appropriate to require lawyers to pay that fee as a part of the price of licensure. There is no reason today to reach any different conclusion, and in fact, there is probably greater justification.

We agree with the Wisconsin Supreme Court that 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.” *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=1101>.

Rule 6.1 of the Minnesota Rules of Professional Conduct says that “every lawyer has a professional responsibility to provide legal services to those unable to pay.” The same rule says that lawyers should “voluntarily contribute financial support to organizations that provide legal services to persons of limited means.” *Id.* The comment to that rule recognizes that “because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services.” Minn. R. Prof. Conduct 6.1 cmt. “Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.” *Id.* Although the comment notes that failure to meet that professional obligation will not subject a lawyer to discipline (“The responsibility set forth in this rule is not intended to be enforced through disciplinary process”), we have already decided that we may condition licensure on payment of fees

for expenses that we deem to be necessary not only for the court, but for the justice system.

The dissent concludes that we lack authority to act on either of these petitions, but does not assert that we acted beyond our authority when we imposed such fees in the past. We see no reason to retreat from our prior actions, and thus, having concluded that we can impose additional fees, we now focus our attention the question of whether we should take that action.

With regard to both the civil legal services fee and the public defender fee, for reasons similar to those articulated by the Wisconsin Supreme Court, the present circumstances warrant granting the petitions. No one quarrels with the notion that civil legal services and the public defender system are dramatically underfunded, and that as a result, our court system as a whole is suffering. With the support of the Minnesota State Bar Association, we now turn to the practicing bar in this time of need.

## CONCURRENCE

ANDERSON, Paul H., Justice (concurring).

“ . . . one Nation under God,  
indivisible, with liberty and  
justice for all.”

Pledge of Allegiance

I concur with our court’s decision to temporarily increase the annual lawyer registration fee by \$75 and allocate this revenue increase to provide additional funding for public defenders. I write separately to chronicle the extraordinary circumstances that compel us to issue this order, to express my reluctance to fund a constitutional mandate in this manner, and to express my disappointment that the Governor and Legislature have failed to adequately fund a constitutional mandate by appropriate means.

Today our court places a significant part of the responsibility for funding the legal representation of indigent persons on the shoulders of lawyers and judges who are licensed to practice law in the State of Minnesota. We do so by raising the lawyer registration fee—a fee each lawyer and judge pays annually to practice law in Minnesota. The Legislature authorized this increase during its 2009 legislative session. *See* Minn. Stat. § 481.22 (2008). Importantly, we do not increase the fee pursuant to the Legislature’s authorization, but do so under our exclusive and inherent power to regulate the legal profession and to ensure the fair administration of justice.

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. I believe that even though this approach is legal, it is the

wrong approach and therefore should not be permitted to continue beyond the life of this particular order. As the dissent points out, our decision blurs the lines that separate the branches of government by placing a general revenue obligation on a discrete part of society.

### **The Scope of the Problem**

The United States Constitution, Minnesota Constitution, and Minnesota law guarantee representation for an indigent person charged with a misdemeanor or more serious crime. *See* U.S. Const. amend. VI; Minn. Const. art. 1, § 6; *State v. Borst*, 278 Minn. 388, 397, 154 N.W.2d 888, 894 (1967); Minn. Stat. § 611.14 (2008). These mandates require that the State provide criminal representation to indigents. It is not only the lawyers of this State who have an obligation to ensure that these mandates are met.<sup>1</sup> It is everyone's responsibility, and the funds should come from the citizens of the State as a whole. 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. The crisis faced by public defenders and the resulting need to impose fees on a specific professional group are the result of an unfortunate

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<sup>1</sup> Minnesota lawyers already do much to make sure that those without financial means get legal help. Many lawyers do pro bono work. According to a Minnesota State Bar Association report, lawyers in large law firms alone completed thousands of pro bono hours. Minnesota State Bar Association, *Report on Pro Bono Legal Service* 4 (2007), available at <http://www.projusticemn.org/library/attachment.148259>. Lawyers also provide financial support for legal service agencies, which represent indigent clients in civil matters, either by voluntary contributions or through the lawyer registration fee. Since 1997, \$50 of each lawyer registration fee has gone to fund legal service agencies. Today, we also increase this amount by \$25—from \$50 to \$75.



impasse which affects how the citizens of Minnesota create and maintain a civilized society.

In Minnesota, the public-defender system is the mechanism that carries out the aforementioned constitutional mandates. It is no small task. Public defenders must “represent, without charge, a defendant charged with a felony, a gross misdemeanor, or misdemeanor . . . [and] a minor ten years of age or older in the juvenile court . . . .” Minn. Stat. § 611.26, subd. 6 (2008). Public defenders also represent the indigent in appeals, post-conviction proceedings, sex offender community notification and review hearings, and supervised release and parole revocation proceedings. Public Defense Board, *2010-11 Biennial Budget* 1 (2008), available at [http://www.leg.state.mn.us/docs/2008/other/081000/public\\_defense.pdf](http://www.leg.state.mn.us/docs/2008/other/081000/public_defense.pdf). Public defenders have little or no control over whom they serve: if a judge determines that a defendant is indigent and therefore unable to hire a private attorney, a public defender must represent that defendant. *See* Minn. Stat. § 611.26, subd. 6; Minn. R. Crim. P. 5.02.

In its petition, the State of Minnesota Board of Public Defense estimates that over 95 percent of all juveniles accused of acts of delinquency and 85 percent of those charged with a felony are represented by a public defender. Moreover, the petition explains that public defenders provide representation in over 170,000 cases per year, and a single defender handles an average of over 700 case units a year, almost twice the American Bar Association’s standard of 400 case units per year. *See also* Public Defense Board, *2010-11, supra*, at 1, 8.

High caseloads are the direct result of underfunding. The Legislature originally assigned to the Board of Public Defense \$134 million from the State General Fund to operate during the fiscal years of 2008 and 2009. *See* Public Defense Board, *2010-11*, *supra*, at 1. Even though the allotment was an increase over the previous biennial budget, the Board faced a \$2.3 million deficit caused by several factors. *See* Associated Press, *MN to Lose 72 Public Defenders to Budget Cuts*, Jun. 5, 2008, <http://wcco.com/local/public.defenders.cut.2.741382.html>. Unanticipated labor-cost increases, a lower than expected attrition rate, a greater than expected salary increase, rising health-insurance costs, and increases in retirement benefits all contributed to this deficit. As with caseloads, the Board has little control over many of these variable expenses. Health insurance for its employees, for example, is negotiated by the State; the Board is then required to pay the costs. Like many agencies that spend a majority of their funds on personnel, a significant increase in health-insurance costs is a heavy burden.

The funding situation worsened for public defenders in the spring of 2008. The Legislature cut \$1.5 million from their budget to address the State's budget deficit. Associated Press, *supra*. As the Board of Public Defense explains in its petition, it faced a \$3.8 million deficit after this reduction and was forced to cut 53 full-time equivalent positions—a greater than 12 percent decrease in its staff. *See also* Associated Press, *supra*. In an effort to adjust to these costs, the Board decided that it would not represent parents in CHIPS (Child in Need of Protection) or TPR (Termination of Parental Rights) matters. Elizabeth Stawicki, *Public Defenders to Stop Representing Poor Parents in Child Protection Cases*, MPR News Q, July 3, 2008,

[http://minnesota.publicradio.org/display/web/2008/07/03/who\\_will\\_pay/](http://minnesota.publicradio.org/display/web/2008/07/03/who_will_pay/). The Board took this action even though a Minnesota Statute, passed by the Legislature and signed by the Governor, provides that a “parent, guardian or custodian has the right to effective assistance of counsel in connection with a proceeding in juvenile court.” Minn. Stat. § 260C.163, subd. 3(a) (2008). There is disagreement regarding who is obligated to pay for representation when a parent is indigent, but the Board asserts public defenders are not statutorily required to represent indigent parents. *See Stawicki, supra*. As a non-mandated service that consumed many resources, parent representation became a low priority for the Board.<sup>2</sup> *See id.* Accordingly, public defenders stopped representing indigent parents.

During the 2009 legislative session, the Legislature reduced the public defense budget by another \$2 million. Rather than cut another 35 attorneys, which would leave remaining attorneys with a caseload of over 800 case units per year, the Board of Public Defense has petitioned our court to increase the annual lawyer registration fee by \$75. The Board anticipates that this fee increase will soften the blow of the most recent budget reduction but acknowledges that it still may need to cut an additional 10 attorney positions.

A failure to fully fund public defenders has dire consequences. Cases are delayed, often to the point where they might be dismissed; certain crimes may no longer be

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<sup>2</sup> Public defenders went from representing 4,055 parents in 1995 to over 9,000 parents in 2006. *See Public Defense Board, 2008-09 Biennial Budget* 18 (2007), available at <http://www.mmb.state.mn.us/doc/budget/bud-op/op09/final-op-oz.pdf>. CHIPS and TPR cases often require the appointment of more than one public defender, as each parent may require separate representation as well as the child. *Id.*

prosecuted, parents may be irrevocably separated from their children without the assistance of an attorney, or counties may decide not to litigate CHIPS cases because the public-defender system cannot afford to provide an attorney to parents in those cases. Recognizing the current crisis and that the public-defender system cannot afford to lose another 35 attorneys, our court has reluctantly authorized this fee increase.

A recent newspaper article placed a human face on this issue. Nolan Rosenkrans, writing for the *Winona Daily News* said:

Karin Sonneman is overwhelmed.

The voice mailbox of Winona County's only full-time public defender was full Friday, clogged with messages from clients. Each day, it seems, she's assigned a new felony case to defend.

Her client list hovers at 250, most of them felonies, and has become so overwhelming, she says it affects her ability to prepare proper defenses. "We have just about enough time to triage cases," she said. "I like to give every case the full measure of my time. It's just become crazy."

Winona's public defenders say they are so understaffed and overworked they plan to ask judges to delay non-violent misdemeanor cases until Minnesota's Third Judicial District can find a way to lighten caseloads. The plan could give them more time to prepare defenses in serious cases and spend more face-time with clients, but it also leaves the smaller cases up in the air.

"That's the kind of stuff that keeps me up at night," said Karen Duncan, chief public defender for Minnesota's Third Judicial District. "I recognize how important these are for people, but the truth is we aren't able to prepare for these cases."

Nolan Rosenkrans, *Public Defender's Office Overloaded*, Winona Daily News, Oct. 18, 2009, [http://www.winonadailynews.com/news/local/crime-and-courts/article\\_80752cb0-bb9b-11de-ae76-001cc4c03286.html](http://www.winonadailynews.com/news/local/crime-and-courts/article_80752cb0-bb9b-11de-ae76-001cc4c03286.html).

## **Possible Solutions**

Public defenders do not expect that their problems will abate in the near future; they only expect the problems to get worse. State funding is not expected to increase any time soon, and large budget deficits are expected to continue. Some people, both at the national and state level, are so bold as to welcome this turn of events by clearly articulating their goal to shrink government down to a size so small that it can be drowned in a bathtub. The problem with this approach is that when you continuously put the government's head underwater, it is not the government that drowns—real people drown. Floodwaters breach levies and people drown. Bridges collapse and people drown. I have little tolerance for this anti-government rhetoric given the adverse consequences that result to people, especially the least advantaged among us, when this myopic approach to governing actually gets translated into policy. I believe that government does have a proper, even an essential role to play in creating and preserving a civilized society. Meeting constitutional mandates is part of that role.

Some people suggest that the problem we face can be solved by making fundamental changes to the judicial/legal system. I agree that changes can be and need to be made, but the changes must be viable. One well-intentioned legislator states that “We need to be more judicious in the cases we prosecute” and suggests that aggressive prosecution of some animal abuse cases, minor drug crimes, and drunken driving violations clogs up the courts. Rosenkrans, *supra*. This proposed solution is not without controversy and needs the cooperation of prosecutors to be successful. Others suggest that the Board of Public Defense must conduct an audit of how it performs its duties, so it

can become more efficient. This is also an approach that I support even though I know the results will not completely solve the extraordinary problems public defenders face. One conclusion is inevitable; the Governor and Legislature must pursue more basic solutions.

More than 80 years ago the distinguished United States Supreme Court Justice Oliver Wendell Homes wrote, “Taxes are what we pay for civilized society . . . .” *Compañía General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting). I believe that most, if not all, of the citizens of Minnesota want to be part of a civilized society. In fact, I believe that we want to be a notch or two above the rest. But, how do we determine or measure what a civilized society is? One measure of a civilized society is how it treats its weakest members. To understand how this concept plays out in the legal system, it is helpful to look to the words of the late United States Supreme Court Justice William J. Brennan, Jr., who said,

But it has been well said that there is no better test of a society than how it treats those accused of transgressing against it. Indeed, it is because we recognize that incarceration strips a man of his dignity that we demand strict adherence to fair procedure and proof of guilt beyond a reasonable doubt before taking such a drastic step.

William J. Brennan, Jr., Associate Justice of the United States Supreme Court, Address to the Text and Teaching Symposium at Georgetown University (October 12, 1985).

I believe that when we Minnesotans recite the Pledge of Allegiance and say the words, “and justice for all” we mean them. And as Justice Brennan’s words indicate, justice includes a guarantee of fair procedures and proof of guilt beyond a reasonable doubt for anyone accused of a crime. In *Gideon v. Wainwright*, the United States

Supreme Court wisely recognized that “in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” 372 U.S. 335, 344 (1963).

Those who know me well know that I am no fan of big government—never have been and it is unlikely I ever will be. But those who know me well also know that I understand that a government properly supported by the resources of its people has an essential role in guaranteeing that we live in a civilized society. Support for essential legal services is a mandate of both of the constitutions under which we live. Our constitutions do not assign to lawyers the obligation to fulfill the mandates contained therein. Rather, they provide that these mandates are an obligation to be borne by the whole of society—in this case by all of the citizens of Minnesota.

In conclusion, I must acknowledge that I am sympathetic with many of the constitutional issues raised by the dissent and am very concerned about the nature of the action we take today. I am concerned that our action tends to blur the distinctions between the three branches of government. Despite my concerns, I agree with the majority that under our inherent powers we do have authority to impose a fee increase on lawyers to support public defenders. But the fact that we have this authority does not mean it is the right thing to do.<sup>3</sup>

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<sup>3</sup> Another reason I vote for the fee increase at this time is that I am acutely aware of the daunting challenge the Governor and Legislature face in balancing the budget. These are tough economic times and many Minnesotans are in severe financial straits as a result of the current economic downturn. I in no way intend to minimize the challenges the Governor and Legislature face; rather, I urge them to do the right thing for all citizens and consider all available options as they face this challenge.

That said, I must say that one key reason I vote for the increase is that it is only temporary—for two years. Here I am inclined to paraphrase the words of Chief Joseph of the Nez Perce by saying, I will vote to grant such a fee increase no more forever. But I refrain from making such an unequivocal statement because I, like most lawyers, know that a person speaking about the future is generally ill-advised in making a statement or pledge that contains an absolute. Nevertheless, it is unlikely that in the future I will support this method of funding the constitutional mandate to adequately fund the public-defender system. It is my hope that at the end of this two-year period, the Governor and Legislature will thoughtfully reexamine their respective positions, consider what it means to live in a civilized society and reflect upon the meaning behind the words “and justice for all” in the Pledge of Allegiance. If they do such a reexamination, I hope they will, with the support of the people of Minnesota, provide adequate funding for Minnesota’s public defenders.



## DISSENT

PAGE, Justice.

I respectfully dissent.

First, a “fee” imposed solely to raise revenue to fund an obligation of the state is a tax, plain and simple. *See, e.g., Marigold Foods, Inc. v. Redalen*, 809 F. Supp. 714, 719 (D. Minn. 1992) (“Premiums imposed primarily for revenue-raising purposes are considered taxes.”). The Minnesota Supreme Court has no authority, inherent or otherwise, to levy taxes. *Reed v. Bjornson*, 191 Minn. 254, 257-58, 253 N.W. 102, 104 (Minn. 1934) (“Power of taxation reposes in the Legislature except as limited by state or national Constitution.”); *see also Meriwether v. Garrett*, 102 U.S. 472, 501, 12 Otto 472 (1880) (“The power of taxation is legislative, and cannot be exercised otherwise than under the authority of the legislature.”). The court attempts to justify the purported “fee” increase here under our inherent authority to regulate the practice of law and compares it to the imposition of a fee to defray the costs of administering the attorney licensure system. Here, the \$75 “fee” increase has no regulatory purpose; it is not intended to alter the behavior of those who are otherwise required to pay it. Its only purpose is to raise revenue in order to provide funding for the State Public Defender’s Office. Nor does the “fee” increase in any way assist the court in regulating the practice of law, as the attorney licensure system does, beyond providing justification for suspending the license of any lawyer who fails to pay it. Therefore, we should label it the tax that it is.

Because it is a tax, we may not impose it. By doing so, we violate Articles III, VI, and X of the Minnesota Constitution. In the process, we have also enlarged the scope of what constitutes a regulatory fee to the point that it will be difficult, if not impossible, in any future case for the court to find that any assessment by a government agency constitutes a tax. Further, the fact that the Wisconsin Supreme Court authorized the Wisconsin State Bar to assess Wisconsin lawyers a “fee” for the support of civil legal services does not alter the fact that this “fee,” used to fund the public defense system, is nothing more than a tax on a discrete population of Minnesota citizens—lawyers.

Second, even if we ignore its revenue-raising purpose and pretend that the increase serves some regulatory purpose sufficient to characterize it as a fee and not a tax, the court’s decision to impose it is bad judicial policy. The Sixth Amendment to the United States Constitution and Article I, Section 6, of the Minnesota Constitution give criminal defendants the right to counsel. As a result, the obligation to fund the public defense system belongs to the State of Minnesota—the entire state, not just a limited group of its citizens. In raising lawyer registration fees to provide funds for the public defense system, the court cites our “inherent authority.” The court surely has the inherent authority to impose fees to fund those entities, such as the Board of Law Examiners and the Lawyers Professional Responsibility Board, that assist the court in regulating the profession. But the court has no more “inherent authority” to require lawyers to fund the

public defense system than it does to require lawyers to provide general funding for the judicial branch of state government.<sup>1</sup>

Third, the court has de facto acceded to the legislature's demand that the court impose the requested fee. The legislature has no authority to require the court to do so, an issue that should have been settled by *Sharood v. Hatfield*, 296 Minn. 416, 210 N.W.2d 275 (1973).

Fourth, by becoming part of the funding mechanism for the public defense system, the court has made itself part of a problem it may one day be called upon to address. On more than one occasion, a criminal defendant has come before us claiming that he received ineffective assistance of counsel because the state public defense system is chronically and severely underfunded. When a future criminal defendant challenges the quality of his representation by the public defender's office because the system is underfunded, the court will be faced with trying to justify its role in that funding. When that happens, there will be no way for us to resolve the conflict of interest and still maintain our status as a neutral arbiter, which is the foundation of our moral authority and the source of our public respect.

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<sup>1</sup> Applying the court's reasoning, it would seem to be at least as appropriate for the court to increase lawyer registration "fees" to provide funding for judicial vacancies that have not been filled across the state as a result of the state's fiscal crisis or to rehire laid-off court staff to assist the public, including lawyers. Having judges to hear and decide cases and staffing to meet the needs of the public is at least as important to the administration of justice as funding for the public defense system.

To be clear, the state's public defense system is chronically and critically underfunded.<sup>2</sup> The additional funds provided by the increase in lawyer registration fees will not change that fact. If the legislature will not adequately fund public defense, the judicial branch must do what it constitutionally can to alleviate the problem. If defendants cannot be promptly tried because no public defender is available, the courts can dismiss the charges. If defendants do not receive fair trials because their public defenders cannot hire experts or investigators or devote sufficient time to adequately prepare for trial, the courts can overturn the convictions. If defendants' appeals are delayed because no public defender is available to pursue the appeal, the courts can order the defendants released on bail until their appeals can be heard. But the judicial branch cannot exceed its constitutional authority, and that is what the court has done here.

I therefore dissent.

MEYER, J. (dissenting).

I join in the dissent of Justice Page.

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<sup>2</sup> By its order, the court, no doubt, intends to alleviate this underfunding problem. Sadly, it will have the opposite effect. The increased "fee" does not come close to addressing the public defense system's chronic underfunding. And now that the executive and legislative branches of state government can rely on the judicial branch to tax lawyers in order to fund a portion of the public defense system's needs, the executive and legislative branches have even less incentive to provide adequate funding.

## DISSENT

GILDEA, Justice (dissenting).

I join in the dissent of Justice Page to the extent that he concludes that the court lacks the authority to grant the petition of the Board of Public Defense. The same analysis compels the conclusion that the court lacks the authority to grant the petition of the Legal Services Planning Committee. I therefore dissent.