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STATE OF MICHIGAN  
IN THE SUPREME COURT

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86099

IN THE MATTER OF THE RECORDER'S COURT  
BAR ASSOCIATION, THE CRIMINAL DEFENSE  
ATTORNEYS OF MICHIGAN, THE MICHIGAN TRIAL  
LAWYERS ASSOCIATION, WOMEN LAWYERS ASSOCIATION  
OF MICHIGAN, AND THE SUBURBAN BAR ASSOCIATION,

Petitioners,

v

WAYNE COUNTY CIRCUIT COURT AND  
RECORDER'S COURT,

Respondents,

and

WAYNE COUNTY,

Intervening Respondent.

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BRIEF OF AMICUS CURIAE - DETROIT BAR ASSOCIATION

SIDNEY KRAIZMAN, P-16199  
Attorney for Detroit Bar Assoc.  
1616 Ford Building  
Detroit, Michigan 48226  
(313) 961-7078

FREDERICK M. FINN, P-32268  
Attorney for Detroit Bar Assoc.  
2300 Penobscot Building  
Detroit, Michigan 48226  
(313) 964-1383

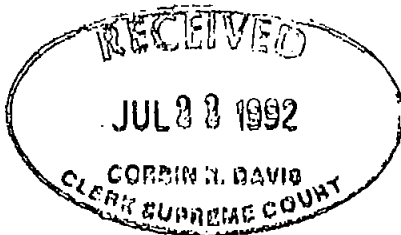


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CONSTITUTIONS

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QUESTION PRESENTED

I

IS THE FLAT FEE SCHEDULE PRESENTLY  
USED IN WAYNE COUNTY UNREASONABLE,  
UNJUST, A DISINCENTIVE TO THE DUE  
PROCESS OF LAW, AND IN DEROGATION OF  
THE 14TH AMENDMENT OF THE CONSTITUTION  
OF THE UNITED STATES AND SECTION 20,  
ARTICLE I, OF THE MICHIGAN CONSTITUTION  
OF 1963?

PLAINTIFF SAYS, "YES".

THE DEFENDANT SAYS, "NO".

THE SPECIAL MASTER, THE HONORABLE TYRONE GILLESPIE,  
SAYS, "YES".

THE DETROIT BAR ASSOCIATION SAYS, "YES".

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STATEMENT OF FACTS

Pursuant to Michigan Supreme Court Order No.: 86099 dated November 6, 1989, Tyrone Gillespie, retired Circuit Judge from Midland County, was appointed as Special Master and took testimony from 32 witnesses on the following two principal questions:

1. Are attorneys appointed to represent indigent Defendants in felony cases in the Detroit Recorder's Court and the Wayne County Circuit Court being fairly compensated for their services?

2. Does the flat fee schedule presently used in Wayne County create a constitutional problem by inducing indigent criminal Defendants to plead guilty, foregoing their rights under United States and State of Michigan Constitutions?

The Special Master, the Honorable Tyrone Gillespie, took testimony from 32 witnesses and made factual findings and conclusions of law which are contained in the Report of Special Master - Honorable Tyrone Gillespie, which is 226 pages in length. The fee schedule for the Third Judicial Circuit and the Detroit Recorder's Court, which is the subject matter of this suit, is attached as Exhibit A. It should be noted that this fee schedule provides compensation for offenses carrying a maximum sentence of life imprisonment (except Murder I and Murder II), in the fixed amount of \$750.00 for attorneys appointed to represent the indigent Defendant.

This Honorable Court is referred to the Findings of Fact, Comment, and Recommendations of the Special Master, Tyrone Gillespie, contained on pages 205-226.

DETROIT BAR ASSOCIATION

The Detroit Bar Association (DBA) is a special purpose bar association which traces its organizational roots from the year 1836 and currently has a membership of 3800 attorney members. The Detroit Bar Association assists in the continuing legal education of its members through providing legal seminars in both criminal and civil law. The Detroit

Bar Association operates a large and comprehensive library which covers both civil and criminal law in state and federal courts for the benefit of its members. The Association also has a proud history of legal service to the community, particularly in the area of providing legal services to the poor in civil and administrative matters.

Among other public interest programs, the Detroit Bar Association established the Legal Aid Society of Detroit with the aim of providing legal services to the poor. That legal service program for indigent persons has since evolved into the Detroit Legal Aid and Defender Association of today.

Recognizing its history of public service the Detroit Bar Association seeks to file an Amicus Curiae Brief in this case.

## ARGUMENT

### I

THE FLAT FEE SCHEDULE PRESENTLY USED IN WAYNE COUNTY IS NOT REASONABLE OR JUST AND IS A DISINCENTIVE TO THE DUE PROCESS OF LAW IN DEROGATION OF THE 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND SECTION 20, ARTICLE I OF THE MICHIGAN CONSTITUTION OF 1963.

The attached fee schedule used in Wayne County provides in part that for offenses carrying a maximum sentence of life imprisonment (except Murder I and Murder II) the fixed fee in the trial court is \$750.00. See Exhibit A. The Special Master, the Honorable Tyrone Gillespie, found that the current fixed fee schedule utilized in the Detroit Recorder's Court and Wayne County Circuit Court, based solely on maximum possible sentence, is unreasonable in that it only includes one factor of what the Michigan Supreme Court found to be the test of reasonableness in Wood v DAIE, 413 Mich 573,588 (1982). In Comment #9 the Special Master, Tyrone Gillespie, found that the current system of payment is "not reasonable or just and is a disincentive to due process."

Judge Gillespie found that in many cases motions which should have been filed on behalf of indigent Defendants were not filed. In Comment #7 Judge Gillespie found that "there has developed a number of lawyers characterized as 'waivers and pleaders' who operate from pocket notes without secretaries or offices who live on guilty pleas."

At Recommendation #3 Judge Gillespie stated that the current schedule of payment of attorney fees, such as the flat fee of \$750.00 for capital offenses, speeds the Court docket but results in indigent Defendants being "treated differently than those Defendants who can afford to hire their own attorneys."

In Jewell v Maynard, 383 SE 2d 536 (1989) the Supreme Court of West Virginia in a similar case called upon the State of West Virginia to pay \$45.00 per hour for out-of-court work and \$60.00 per hour for in-court work in spite of a statute which provided for \$20.00 per hour for out-of-court work and \$25.00 per hour for in-court work. The West Virginia Supreme Court found that the fee schedule, which dated to 1977, "creates an inherent conflict of interest that implicates the client's right to effective assistance of counsel." Jewell v Maynard, 383 SE 2d at 546. The Special Master, Judge Tyrone Gillespie, recognized that Jewell v Maynard, supra, was squarely on point.

"ETERNAL VIGILANCE IS THE PRICE OF LIBERTY"

On Thomas Jefferson's white marble memorial in Washington, D.C. are emblazed the words "Eternal Vigilance is the Price of Liberty." It is our duty as attorneys and judges to be forever vigilant to ensure that our system of justice under the Constitution of the United States is never



eroded. As the Court stated in Griffin v Illinois, 351 US 12; 76 S Ct 585 (1956) at page 591:

"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."

The Detroit Bar Association's ultimate goal is to improve the quality of representation afforded indigent Defendants at trial and on appeal by assigned counsel. To achieve that goal, it is essential that a fee schedule be adopted which allows for reasonable compensation for attorneys representing indigent Defendants in felony cases. It is further recommended that the Michigan Supreme Court adopt the Judge Jobs Committee Report which contains a recommended fee schedule based upon specific services performed, events, with a reasonable escalator clause based on inflation since the 1982 date of that report. Recommendation #1,B. That is one of the three alternative recommendations made by the Special Master, Judge Tyrone Gillespie, at Recommendation #1. The Judge Jobs Committee Report takes into account the budgetary and administrative concerns of the Court and provides reasonable compensation for services actually performed by the attorney for the indigent Defendant.

RELIEF

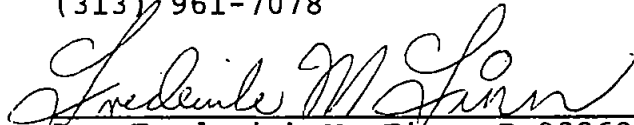
WHEREFORE, the Detroit Bar Association respectfully requests that this Honorable Court adopt a fee schedule which allows for reasonable compensation for attorneys representing indigent Defendants in felony cases and specifically adopt the Judge Jobs Committee Report which contains a recommended fee schedule based upon specific services performed, events, with a reasonable escalator clause based on inflation since the 1982 date of that report.

Respectfully submitted,

KRAIZMAN & KRAIZMAN



By: Sidney Kraizman, P-16199  
Attorney for Detroit Bar Assoc.  
1616 Ford Building  
Detroit, Michigan 48226  
(313) 961-7078



By: Frederick M. Finn, P-32268  
Attorney for Detroit Bar Assoc.  
2300 Penobscot Building  
Detroit, Michigan 48226  
(313) 964-1383

Dated: July 21, 1992

H I S T O R Y

The order which is the subject of this suit is Joint Administrative Order 1988-2 setting up a flat fee schedule effective July 1, 1988 which is currently in use. The order and schedule are set forth as follows:

STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT AND THE  
RECORDER'S COURT FOR THE CITY OF DETROIT

JOINT ADMINISTRATIVE ORDER  
1988-2

IT IS ORDERED:

The attached fee Schedule G representing fees for assigned counsel is adopted for all vouchers submitted after July 1, 1988. Joint Administrative Order 1988-1 including Schedule F is set aside and replaced by this Order and Schedule G.

Counsel appointed for indigent defendants may make no expenditure, other than for subpoena fees, for which he or she expects reimbursement except upon prior approval and order of the trial judge on motion for good cause shown.

In any case in which more than one criminal offense is charged, payment shall be made for only the charge carrying the greatest potential term of imprisonment.

Counsel is required to consult with the defendant prior to the preliminary exam. Consequently, if the defendant is in jail counsel must attach to the fee voucher evidence of a jail visit; and if the defendant is not in jail, counsel must attach to the fee voucher an executed form available from the office of the Circuit Court Administrator or Recorder's Court Administrator verifying that counsel has met with the defendant prior to the preliminary exam. Failure to attach this document to the voucher will result in a \$75.00 deduction from the appropriate fixed fee.

In all cases, counsel may petition the Chief Judge for the payment of extraordinary fees. All petitions for extraordinary fees must include an analysis of all assigned cases for the previous one year.

DATED: June 27, 1988

/s/ Richard C. Kaufman  
RICHARD C. KAUFMAN  
EXECUTIVE CHIEF JUDGE

EXHIBIT A

SCHEDULE G - EFFECTIVE JULY 1, 1988  
 (For vouchers submitted on or after above date)

I. CRIMINAL CASES IN THE TRIAL COURT

<u>OFFENSE CATEGORY</u>	<u>FIXED FEE</u>
24 MONTH MAX	\$ 475
36 MONTH MAX	500
48 MONTH MAX	525
60 MONTH MAX	550
84 MONTH MAX	575
120 MONTH MAX	600
168 MONTH MAX	625
180 MONTH MAX	650
240 MONTH MAX	675
LIFE (except MUR I & II)	750
MURDER II	1,000
MURDER I	1,400

The fixed fee rates in the above table will be paid in all cases, except under those circumstances listed below.

EXCEPTIONS

1. Multiple Cases with Same Defendant:  
 100% of fixed fee for case with most serious charge  
 50% of fixed fee for each other case
  
2. Case Dismissed at Exam Due to Complainant's Failure to Appear: \$100.00
  
3. Case Where Capias Warrant is Issued:  
 Before preliminary exam - 10% of fixed fee  
 After exam - 20%  
 After AOI - 30%  
 After final conference - 40%  
 After disposition, before sentence - 90%
  
4. Attorney Replaced by Retained Counsel:  
 After preliminary exam - 20% of fixed fee  
 After AOI - 30%  
 After final conference - 40%
  
5. Diversion: \$100.00  
 Before preliminary exam  
 After exam - paid as disposition
  
6. Probation Violation or Extradition Hearing: \$ 75.00
  
7. Welfare Fraud:  
 Diversions - for a grouping of 25 defendants \$1,000.00  
 Pleas - for a grouping of 5 defendants \$1,000.00

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PROOF OF SERVICE

STATE OF MICHIGAN    )  
                                          )ss.  
COUNTY OF WAYNE    )

MARGARET WELCH, being first duly sworn, deposes and says that on the 21st day of July, 1992 she served a true copy of BRIEF OF AMICUS CURIAE - DETROIT BAR ASSOCIATION upon the following:

Mr. Frank D. Eaman, Esq.  
2815 Cadillac Tower  
Detroit, MI 48226

Mr. Craig A. Daly, Esq.  
577 E. Larned, Ste. 240  
Detroit, MI 48226

Mr. Alphonso R. Harper, Esq.  
18040 Fairfield  
Detroit, MI 48221

Ms. Diane P. Lemaneck  
Mr. Joseph F. Chiesa  
742 City-County Building  
Detroit, MI 48226

Ms. Karen G. Watkins  
Mr. Bryan L. Amann  
Mr. Saul A. Green  
600 Randolph, 2nd Floor  
Detroit, MI 48226

Mr. Gerald Lorence, Esq.  
1750 Penobscot Building  
Detroit, MI 48226

Mr. Ken Mogill  
One Kennedy Square, Ste. 1930  
Detroit, MI 48226

Ms. Barbara R. Levine  
Admin., Michigan Appell.  
Assigned Counsel System  
Hollister Bldg., Ste.365  
Lansing, MI 48913

Mr. Dennis Shrewsbury, Esq.  
151 Adams  
Plymouth, MI 48170

Mr. Charles J. Barr, Esq.  
2715 Cadillac Tower  
Detroit, MI 48226

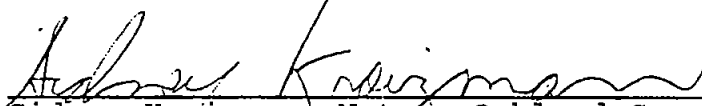
Ms. Dawn VanHoek, Esq.  
1200 6th Street  
3rd Floor, North  
Detroit, MI 48226

By mailing said document to the respective person with postage pre-paid and deposited in the United States Mail.



MARGARET WELCH

Subscribed and sworn to before  
me this 21st day of July, 1992.



Sidney Kraizman, Notary Oakland County  
Acting in Wayne County, Michigan  
My commission expires: 3/27/95