STATE OF MINNESOTA

IN SUPREME COURT

81-1206

In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of Rules Relating to Registration of Attorneys.

ORDER

WHEREAS, the Minnesota State Bar Association petitioned the Supreme Court to amend Rule 2 of the Rules for Registration of Attorneys to read as follows:

RULE 2. REGISTRATION FEE

"In order to defray the expenses of examinations and investigations for admission to the bar and disciplinary proceedings, over and above the amount paid by applicants for such admission, with exceptions hereinafter enumerated, each attorney admitted to practice law in this state and those members of the judiciary who are required to be admitted to practice as a prerequisite to holding office shall hereafter annually pay to the clerk of the supreme court a registration fee in the sum of Forty-five Dollars ($45.00) or in such lesser sum as the court may annually hereafter determine.

"Such fee, or a portion thereof, shall be paid on or before the first day of January, April, July, or October of each year as requested by the clerk of the supreme court. All sums so received shall be allocated as follows:

$7.00 to the State Board of Law Examiners

$5.00 to the State Board of Continuing Legal Education

$33.00 to the Lawyers Professional Responsibility Board

"The following attorneys and judges shall pay an annual registration fee of Twenty Dollars ($20.00):

(a) Any attorney or judge whose permanent residence is outside the State of Minnesota and who does not practice law within this state;

(b) Any attorney who has not been admitted to practice for more than three years;

(c) Any attorney while on duty in the armed forces of the United States;

"The Twenty Dollars ($20.00) so received shall be allocated as follows:

$7.00 to the State Board of Law Examiners

$5.00 to the State Board of Continuing Legal Education

$8.00 to the Lawyers Professional Responsibility Board

"Any attorney who is retired from any gainful employment or permanently disabled, and who files annually with the clerk of the supreme court an affidavit that he is so retired or disabled and not engaged in the practice of law, shall be placed in a fee-exempt category and shall remain in good standing. An attorney claiming retired or permanently disabled status who subsequently resumes active practice of law shall promptly file notice of such change of status with the clerk of the supreme court and pay the annual registration fee.

"Any judge who is retired from any gainful employment or permanently disabled, who no longer serves on the bench or practices law, and who files annually with the clerk of the supreme

court an affidavit that he is so retired or disabled and not engaged in the practice of law, shall be placed in a fee-exempt category and shall remain in good standing. A judge claiming retired or permanently disabled status who subsequently resumes service on the bench or the active practice of law shall promptly file notice of such change of status with the clerk of the supreme court and pay the annual registration fee.

"In order to maintain and improve delivery of attorneys' services in civil matters to indigent and disadvantaged residents of Minnesota, a surcharge shall be imposed upon all attorney registration fees otherwise due and payable pursuant to this Rule in the year 1982.

"The surcharge shall be in the amount of $25.00 for each attorney or member of the judiciary who is otherwise required by this rule to pay an annual registration fee in the amount of $45.00.

"The surcharge shall be in the amount of $10.00 for each attorney or judge who is otherwise required by this rule to pay an annual registration fee in the amount of $20.00.

"All sums received as surcharge in 1982 shall be allocated to an Advisory Committee on Civil Legal Assistance, whose members will be appointed by further order of this Court on or before January 1, 1982. The Advisory Committee shall consist of nine members appointed by the Supreme Court including seven attorneys at law who are well acquainted with the provision of legal services in civil matters to persons unable to pay for such services and two persons who would qualify as eligible clients.

Four of the attorney at law members shall be nominated by the state bar association in the manner determined by it, and three of the attorney at law members shall be nominated by the programs in Minnesota providing legal services in civil matters with funds provided by the federal Legal Services Corporation in the manner determined by them; provided, that in making the appointments of the attorney at law members, the Court shall not be bound by these nominations.

"The Committee shall accept applications for these funds, and shall distribute these funds in accordance with this rule, subject to review by the Court.

"The funds shall be disbursed to existing programs which provide general civil legal services to indigent and disadvantaged persons in Minnesota, particularly in rural areas, upon the undertaking by such programs to use a portion of the funds to assist in the development and improvement of delivery of legal services by local volunteer attorneys. A portion of the funds shall be used to assist in the state-wide coordination of local volunteer attorney programs."

WHEREAS, the Supreme Court wishes to hold a public hearing on this petition,

NOW, THEREFORE, IT IS HEREBY ORDERED that a hearing on this petition be held in the Supreme Court Chambers in the State Capitol, Saint Paul, Minnesota, at 9 a.m. on Friday, January 8, 1982.

IT IS FURTHER ORDERED that advance notice of the hearing be given by the publication of this order once in the Supreme Court edition of FINANCE AND COMMERCE, ST. PAUL LEGAL LEDGER, and BENCH AND BAR.

IT IS FURTHER ORDERED that interested persons show cause, if any they have, why the proposed petition should not be granted. All persons desiring to be heard shall file briefs or petitions setting forth their objections, and shall also notify the Clerk of the Supreme Court, in writing, on or before December 31, 1981, of their desire to be heard on the matter. Ten copies of each brief, petition, or letter should be supplied to the Clerk.

DATED: November 17th 1981.

BY THE COURT

Chief Justice

81-1206

(3)

JOHN REMINGTON GRAHAM
COUNSELOR AT LAW

224 North 5th Street
Brainerd, Minnesota 56401
December 4, 1981

Hon. Douglas K. Amdahl
Chief Justice of the Supreme Court
St. Paul, Minnesota 55155

Re: In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of the Rules Relating to the Registration of Attorneys, No. 81-1206

Dear Mr. Chief Justice:

This morning I read with agitation and sorrow the notice in Finance and Commerce for November 27, 1981, announcing the above-entitled petition which calls for a surcharge of $25.00 on the annual registration fee paid by members of the members of the Minnesota Bar by order of the Minnesota Supreme Court. This letter may be taken as my statement of objection and request to be heard.

In the year 1215 at Runnymede, King John of England granted a famous instrument of civil liberty known as Magna Carta, and subsequently confirmed some forty-seven times during the reigns of Henry III, Edward I, Edward III, Richard II, Henry IV, and Henry V. The 12th Article of the Charter of John gave the seminal statement of the first principle of Anglo-American constitutional law:

> "Nullum scutagium vel auxilium in regno nostro nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et primogenitum filium nostrum militem faciendum, et ad filiam nostram primogenitam semel maritandam, et ad haec non fiat nisi rationabile auxilium: simili modo fiat de auxiliis de civitate Londoniarum."

In substance, King John ordained that no scutage or aid would be imposed except by consent of the Common Council of the Kingdom, but reserved to the Crown the power to call for the payment of aids to ransom the body of the King, or when the eldest son of the King became a knight, or when the eldest daughter of the King was married. A scutage was a feudal money payment in lieu of knight's service owed. An aid was a feudal grant by the tenant of land to his lord in times of distress or need. The Common Council of the Kingdom was the embryonic Parliament of the day, consisting of all archbishops, bishops, earls, and greater barons, as well as all who held land by direct enfoeffment from the King.

It is plain enough that the 12th Article of the Charter of John did not in itself establish that there should be no taxation without the consent of the duly elected legislative representatives of the people. Yet, it is equally clear that the article set forth the root principle.

In due course of time, the Constitution of England broaded the 12th Article of Magna Carta. The Common Council of the Kingdom became a bicameral legislature, consisting of a House of Lords made up of of bishops and titled nobility, and a House of Commons representing the people at large and elected by freeholders in the countryside, by freemen in the cities and boroughs, and by the faculties and students of certain universities. It became established that, not only scutages and aids, but all taxes of whatever description had to originate in the House of Commons as a money bill introduced there. The Lords and King could only approve or disapprove of such bills. Neither the Lords nor the King could amend such a bill and send it back to the Commons for reconsideration. This remains the law of England today. Only the Parliament at Westminster can levy a tax. All taxation must originate in the lower chamber of the legislature. Taxation is exclusively a legislative power, not shared in any way by executive and judicial magistrates.

In the Virginia Convention of 1788, Mr. Wilson Nicholas explained how this important principle developed:

> "The history of the English Parliament will show that the great degree of power which they now possess was acquired from beginnings so small, that nothing but the innate weight of the power of the people, when lodged with their representatives, could have effected it. In the reign of Edward I, in the year 1295, the House of Commons was first called by legal authority; they were then confined to giving their assent barely to supplies of the Crown. In the reign of Edward II, they first annexed petitions to the bills by which they granted subsidies. Under Edward III, they declared they would not in future acknowledge any law to which they had not consented: in the same reign, the impeached and brought to punishment some of the ministers of the Crown. Under Henry IV, they refused supplies until an answer had been given to their petitions; and they have increased their powers in succeeding reigns, to such a degree, that they entirely control the operation of government, even in those cases where the king's prerogative gave him, nominally, the sole discretion." -- Elliot (ed.), Debates on the Federal Constitution, 2nd Ed., Vol. 3, p. 16 (June 4, 1788).

Given human nature for what it is, no one should be surprised to find that numerous efforts were made to circumvent this invaluable rule of government.

Shortly after King Charles I ascended the throne, royal revenues were insufficient to accomplish various favorite projects of the Crown. Subjects were confronted with royal requests for "gifts" and "loans." When these were refused, the subjects thus harrassed were on occasion imprisoned arbitrarily, and summoned before the Privy Council to answer why they had not complied. This sorry state of affairs gave rise to another great charter of liberty known as the Petition of Right, 3 Charles I, Chapter 1 (1628), and originating in the House of Commons under the authorship of Sir Edward Coke. The 10th Article of the Petition of Right prayed the King:

> "That no man hereafter be compelled to make any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament; and that none be called to make answer, or to take such oath; or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman, in any manner as is before-mentioned, be imprisoned or detained . . . ."

The House of Lords and the King temporized, but eventually gave assent, whereupon it was established forever that the exclusiveness of legislative power to tax could not be circumvented by giving a tax, or forced levy to raise governmental revenue, another name.

Part and parcel of the power of levying taxes, of course, is the power of appropriating government money. Under the Constitution of England, only Parliament can levy a tax and appropriate money, only legislative authority can do such things, and all such money bills must originate in the House of Commons. No executive or judicial magistrate dare raise or appropriate money of the government by calling a tax a "registration fee" or "professional dues" or giving such a levy any other label which the human urge to usurp power might contrive.

It is therefore of the greatest interest that, in the Case of Sir Edward Seymour, 8 State Tr. 127 (1680), a minister of the Crown was impeached for the high crime and misdemeanor of applying government money for a purpose not specified in an appropriation statute of Parliament.

It is not less important that King James II began his notorious reign by a royal proclamation, issued on the pretext of inherent prerogative, directing payment of certain customs duties not authorized by Parliament. For this nefarious act, the prince was involuntarily deposed under a theory of constructive abdication, as is clearly declared in the Act of 1 William and Mary, Session 2, Chapter 2 (1689). This statute of Parliament contains the famous English Bill of Rights, of which the 4th Article says,

> "That levying money for or to the use of the crown, by pretense of prerogative, without grant of parliament, for a longer time, or in other manner than the same is or shall be granted, is illegal."

I trust that your Honor will therefore concede that the fundamental law of the Mother County ordains certain vital principles: (1) All measures raising or spending government revenues can be authorized only by the legislature. (2) The exclusive power of the legislature to tax cannot be circumvented by calling a tax another name or by attempted exercise of inherent prerogative. (3) Any effort to circumvent this exclusive legislative power is not only an unconstitutional act, but a high crime and misdemeanor for which those responsible may be impeached and removed from office.

I shall not fatigue your Honor with a long recapitulation of the process by which the foregoing principles were engrafted onto the Constitution of the United States, and the constitutions of each and every State in the American Union. Your Honor knows of the illustrious efforts of our founding fathers, from the Resolution of the Virginia House of Burgesses on May 29, 1765, through the Resolves of the Stamp Act Congress of 1765, the Resolves of the First Continental Congress of 1774, the Declaration of Independence in 1776, the debates of the Philadelphia Convention of 1787, and so on and on. Your Honor knows that patriots fought and died to make them our sacred birthright. Your Honor surely recognizes that they have been embraced by Article IV, Section 18, of the Minnesota Constitution, which says,

> "All bills for raising revenue shall originate in the house of representatives, but the senate may propose and concur with the amendments as on other bills."

Surely your Honor must grant that these principles are given added emphasis in Article X, Section 1, which states, "The power of taxation shall never be surrendered, suspended, or contracted away." This simple sentence echos the observation of the great William Pitt as he spoke on the floor of the British House of Commons for repeal of the Stamp Act. In answer to the remonstrance that our forefathers were wild-eyed rebels for insisting on them, he said,

> "The gentleman tells us America is obstinate, America is almost in open rebellion. I rejoice that America has resisted! Three millions of people, so dead to all the feelings of liberty as voluntarily to submit to be slaves would have been fit instruments to make slaves of the rest." -- Peterson (ed.), A Treasury of the World's Great Speeches, Simon & Schuster, New York, 1965, p. 121.

The Minnesota State Bar Association has come into this Court to urge betrayal of the American Revolution. With all their prestige and power, they cannot change those of us who love truth more than respectability.

No doubt your Honor is familiar with the obnoxious doctrine of Sharood v. Hatfield, 210 N. W. 2d 275 (Minn. 1973). It attempts to justify Rule 2 of the Rules for the Registration of Attorneys by calling a tax a "registration fee," and by claiming "inherent power" of forcing a levy to raise government money. For such odious conduct, Charles I eventually lost his head, Sir Edward Seymour lost his office, and James II was compelled to abdicate.

It is probably true that a jurist cannot be impeached for deciding a constitutional question wrongly in good faith. Such at least holds for most questions of fundamental law. Yet there are some principles, which are so basic, so incapable of being mistaken, that clear contraventions thereof are impeachable offenses, and rightly so. I insist,

ever so respectfully, that a judicial tax, even if called something else, notwithstanding that its attempted justification is inherent power, albeit that it is sanctioned by precedent, is a high crime and misdemeanor, and, as such, is subject to the processes of impeachment according to the 8th Article of the Minnesota Constitution.

Rule 2 of the Rules for the Registration of Attorneys is not a mere technical error. It is an attack on the foundations of our legal system, and for this reason I counsel the Court to change course away from it, the same as I should advise a wayward client to avoid a breach of the law.

Rule 3 of the Rules for the Registration of Attorneys aggravates the wrong of Rule 2 by imposing an automatic sanction without notice and hearing, contrary to the plainest dictates of due process. See, e. g., Ex Parte Garland, 4 Wall. 333 (U. S. 1866), and In re McDonald, 204 Minn. 61, 282 N. W. 677 (1938). Rule 3 actually shocks conscience, and adds insult to injury.

I therefore urge the Court to dismiss the petition now under consideration, and to repeal the two rules which the petition seeks to make an even greater embarrrassment.

Thanking you for your attention, I am

Respectfully yours,

John Remington Graham

(12)

JOHN REMINGTON GRAHAM
COUNSELOR AT LAW

224 North 5th Street
Brainerd, Minnesota 56401

81-1206

January 9, 1982

Hon. Douglas K. Amdahl
Chief Justice of the Supreme Court
St. Paul, Minnesota 55155

Re: In the Matter of the Petition of the Minnesota State Bar Association, a corporation, for Amendment of the Rules Relating to the Registration of Attorneys, No. 81-1206

Dear Mr. Chief Justice:

As I drove home after argument yesterday, certain points brought out during the course of debate turned over and over in my mind.

It appears to me that certain members of the Court are having trouble with grasping the unconstitutionality of the registration fee for any purpose, because they fail to see that there is an extremely important distinction between regulation and taxation. The Supreme Court has exclusive power, by virtue of the 3rd and 6th Articles of the Minnesota Constitution, to regulate the bar by rules which are both necessary and proper. Only if taxation is indistinguishable from regulation can the Supreme Court impose a registration fee incident to exercise of its regulatory power.

Before the American Revolution, the British Parliament had power to regulate the colonies in America, for that body was the central, sovereign authority of the Empire. Those who saw no difference between regulation and taxation were responsible for the Stamp Act, and, in due time, the Revolution. In his immortal speech before the House of Commons on January 14, 1766, William Pitt rebuked the error, saying, "The distinction between legislation and taxation is essentially necessary to liberty. The Crown and Peers are equally legislative powers with the Commons. If taxation be a part of simple legislation, the Crown and the Peers have rights in taxation as well as yourselves," etc. Houston Petersron (ed.), A Treasury of the World's Great Speeches, Simon & Schuster, New York, 1965, page 121. What Mr. Pitt said had to be vindicated at the Battle of Yorktown, for which reason the distinction between regulation and taxation remained as an all-important principle in our fundamental law. Hence, by virtue of Article IV, Section 18, of the Minnesota Constitution, the Senate may originate any bill for regulation, but not a bill for taxation. And, for the same reason, the Supreme Court, though undoubtedly vested with certain, limited regulatory powers, has no power to tax. Because of the Petition of Right in 1628 and the English Bill of Rights in 1689, the Supreme Court cannot circumvent this limitation by calling a tax a registration fee or on the pretext of inherent prerogative.

Such is the intended meaning of the Constitution. Because the Constitution belongs to the people, and cannot be altered by judicial interpretation, as is so well stated in Knapp v. O'Brien, 179 N. W. 2d 88 (Minn. 1970), the case of Sharood v. Hatfield, 210 N. W. 2d 275

(Minn. 1973), is null and void in futuro insofar as it condones the practice of judicial taxation under the guise of imposing a registration fee -- or, if I may paraphrase the language of Sir William Blackstone concerning erroneous precedent, not bad law, but no law at all. See his Commentaries on the Laws of England, 1765 Ed., Book I, page 70. Compare, for example, the discussion of the judicial power to declare laws unconstitutional in the opinion of Justice William B. Patterson in Vanhorne's Lessee v. Dorrance, 2 Dall. 304 at 308 (U. S. Cir. Ct. Pa. 1795); the commentary of James Madison concerning judical excess in passing upon the constitutionality of laws in his Report on the Virginia Resolutions of 1798, Elliot's Debates on the Federal Constitution, 2nd Ed., Volume 4, page 459; the remarks of Thomas Jefferson in his letter of September 11, 1804, to Abigail Adams concerning executive power to pass on the constitutionality of laws notwithstanding previous judicial precedent, quoted in Freund et al., Constitutional Law, 4th Ed., pages 13-14; the observations of Alexander Hamilton in The Federalist, No. 81, Mentor Ed., page 485, relative to the legislative power of impeachment to redress judicial usurpations; the argument of Andrew Jackson in his message supporting his veto of the Bank Bill on July 10, 1832, as quoted in Freund et al., supra, pages 14-15; and the comments of Abraham Lincoln concerning the Dred Scott Case in his First Inaugeral Address on March 4, 1861, as quoted in Freund et al., supra, page 15.

During the course of debate, Justice Scott reminded us of the efforts of the late Senator Nicholas Coleman to enact legislation for regulation of the Bar, which would have been an infringement on the exclusive judicial authority to prescribe rules of legal ethics, and of the successful counter-efforts of the Supreme Court to protect its undeniable rights in this particular. If representatives of the Supreme Court and the Bar asked the Legislature for statutory authority to levy a registration fee on lawyers for certain purposes, the exclusive power of the Supreme Court to regulate the Bar would not be threatened in the slightest. The Governor has exclusive power to call forth the militia, yet he must humbly ask the Legislature for money to make the militia an effective force; in doing so, his Excellency does not yield his exclusive authority as commander in chief of the armed forces of the State, and in granting his requests the Legislature does not become a military junta. Indeed, Justice Yetka warned that the Supreme Court must avoid power confrontations with the Legislature, and in this he spoke with wisdom: for suppose that, in the future, the Supreme Court should ask the Legislature for an institutionalized Appellate Division of the Minnesota District Court, or for another raise in judicial salaries, or must counteract some excess of the Legislature seeking to purloin some other uniquely judicial prerogative; in such case, the defenders of the Supreme Court will be emasculated if they must admit that the Justices have arrogated to themselves the power to levy a tax.

I therefore plead for an end of judicial taxation, and offer my services pro bono publico to assist in drafting an appropriate bill for consideration of the Legislature.

Respectfully yours,

John Remington Graham

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289-4041
AREA CODE 507

F. J. O'BRIEN, J.D.
R. V. EHRICK, J.D.
THOMAS WOLF, J.D.
TED E. DEANER, J.D.
LAWRENCE D. DOWNING, J.D.
TERENCE L. MAUS, J.D.
STEVEN S. FULLER, J.D.
CHARLES F. RICHARDS, J.D.
CHARLES F. ANGEL, J.D.
A. R. DeBOER, J.D.
SCOTT R. BROSHAR, J.D.
ALICE P. LEAGUE, J.D.

81-1206

December 18, 1981

Supreme Court
c/o John McCarthy
Clerk of Supreme Court
230 State Capitol
St. Paul MN 55155

Re: In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of Rules Relating to Registration of Attorneys

Dear Justices:

I am writing as a member of the Minnesota State Bar Association and as past president of the Board of Directors of Legal Assistance of Olmsted County, a county-wide legal assistance organization funded by the county of Olmsted and United Way of Olmsted County. While I am in favor of efforts by the Minnesota State Bar Association to seek ways to insure that legal services are provided to indigent civil clients in these times of federal and state budget cuts, I do not believe the proposal currently before the Court adequately protects current county legal assistance programs. While I am aware of the cutbacks to the federal Legal Services Corporation, it is also true that county-wide programs are in need of funds. Our local organization saw a drastic need for and sought funding for a second attorney in our one attorney Olmsted County office. Based on the current economic conditions in our county, this request for funding was denied. Our Board of Directors feels that additional funds are necessary to serve the indigent persons in our county but we have to date been unsuccessful in securing financing. I believe that county-wide legal assistance programs, given sufficient funds, can best provide for the indigent clients in its area. In times when county-wide legal assistance programs are in need of funds, I object to attorneys in that county being required to pay a registration surcharge which could in turn be given predominately to programs funded by the federal Legal Services Corporation.

There are two solutions which could be enacted to overcome this objection. First, the Court could delete the proposal that three of the attorney members of the Advisory Committee on Civil Legal Assistance be nominated by the programs in Minnesota providing legal services with funds provided by the federal Legal Services Corporation. This would insure that the money raised from payments by state attorneys be earmarked for expenditure by state attorneys or clients

of legal assistance programs in the state. I feel confident that the county programs already in existence would be treated fairly if the committee was not stacked with federal program representatives. The second solution, and the one I recommend, is that attorneys residing in counties which provide services through a county-wide legal assistance program be exempted from the surcharge requirement on the condition that they certify to the Supreme Court that the amount of the surcharge was paid directly to the legal assistance program in their county of residence. I believe this suggestion would best insure that local money is used to benefit local persons. It may also generate additional interest by attorneys in their local legal assistance programs and help generate more creative thought on how local volunteer attorneys might be used to help deliver legal services to the disadvantaged.

Thank you for your consideration. I will not be appearing personally at the hearing scheduled for January 8, 1982.

Sincerely,

Charles F. Richards

Charles F. Richards

CFR/llj

cc: Ruth McCaleb, Director, Legal Assistance of Olmsted County

(4)

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John E. Regan (1883-1946)

Robert M. Regan
John E. Regan
Daniel H. Meyer
Michael S. Ryan

Area Code 507
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December 30, 1981

The Honorable Justices of the Supreme Court
State of Minnesota
State Capitol
St. Paul, Minnesota 55101

In Re: In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of Rules Relating to Registration of Attorneys.
Supreme Court File No. 81-1206

Gentlemen:

As a former member of the Board of Governors of the Minnesota Bar Association and as an attorney licensed to practice law before the Supreme Court of the State of Minnesota, I respectfully request the opportunity to be heard on the captioned matter on January 8, 1982.

I enclose herewith and respectfully submit to the Court ten copies of my brief on the matter.

Respectfully,

Robert M. Regan

RMR:b
Enclosures

12-30 copy to each Justice

STATE OF MINNESOTA
IN SUPREME COURT
No. 81-1206

In the Matter of the Petition of the Minnesota State Bar Association, a corporation, for Amendment of Rules Relating to Registration of Attorneys.

BRIEF OF ROBERT M. REGAN, ATTORNEY AT LAW, MANKATO, MINNESOTA

FACTS

I.

The people of the United States of America, through their elected representatives in Washington, D. C., have elected to make substantial cuts in the funding to be provided to the Legal Services Corporation.

II.

The various free legal aid providers in the State of Minnesota have been adversely affected by the Congressionally approved reduction in their funding.

III.

The Legal Assistance Programs of the State of Minnesota have applied to the Supreme Court for restoration of a portion of their lost funds through implementation of a surcharge (tax) on attorney registration fees in the State of Minnesota.

IV.

The Legal Assistance Programs of the State of Minnesota are presently actively lobbying the Legislature of the State of Minnesota for further restoration of

some of their lost funding through legislation which would require an additional $15.00 surcharge (tax) on filing fees for all civil litigation (other than dissolution actions) in the lower courts of the State of Minnesota.

V.

The Petition presently before the Court provides that the Court shall appoint Nine (9) members to a commission which shall serve as the disbursing agent for all funds raised through the surcharge on attorney registration fees.

VI.

That the qualifications for members of the commission to be created are drawn in such a way so as to, at a minimum, place the majority control of the Board in the hands of full-time government employed Legal Aid attorneys and Legal Aid clients or persons who are eligible to be Legal Aid clients.

VII.

As proposed, the committee's actions in accepting applications for and the distributing of the funds to be raised by the surcharge shall be subject to review by the Supreme Court.

ISSUES

I.

Is the surcharge, which Petitioners are requesting the Court to assess along with attorney registration fees in the State of Minnesota, in fact, a tax which, if it is to be imposed at all, should be imposed by the legislative branch of government?

II.

Is it constitutionally permissible for the judicial branch of government to impose a tax for the general welfare of the population?

III.

Is the Supreme Court of the State of Minnesota empowered by the Minnesota Constitution to oversee the distribution of funds raised through a "surcharge" on attorney registration fees between competing requests for such funds?

ARGUMENT

The people of the United States of America, through their elected officials in Washington, D. C., saw fit to create the Legal Services Corporation as a method of providing legal services to poor and indigent members of society. They have also seen fit in the same manner as they created the Legal Services Corporation, to reduce the funding for the Legal Services Corporation, which funding has been provided from the general revenues of the Treasury of the United States of America. The Petitioners in this matter now seek to restore a portion of the lost funding of the various legal aid providers in the State of Minnesota through a device which, although it may be called a "surcharge", is clearly and unmistakably a tax to be imposed upon a selected segment of society by the Supreme Court which, by Constitution, is empowered to regulate that element of society. Nowhere in the Constitution of the State of Minnesota can there be found any authority for the Supreme Court to impose a "tax" upon the members of the legal profession. Petitioners are, in fact, requesting the Court to unconstitutionally usurp the power of the legislative branch of government.

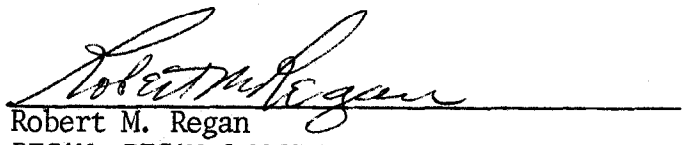
The proponents of the Petition make a mockery of our system of government by the very filing of the pending Petition which amounts to nothing more than lobbying the judicial branch of our government for the purpose of raising taxes for the benefit of a special interest group.

If this special interest group wishes to continue its lobbying efforts (which was responsible in part for its reduction in federal funding), it should go back and lobby Congress and the Legislature.

The question of providing legal services to the poor and indigent members of society should and has been dealt with by the Congress through the creation of the Legal Services Corporation and the appropriations for funding it. It has also been the subject of Ethical Considerations and Disciplinary Rules promulgated by the Supreme Court. If the Supreme Court should grant the Petition and find that it is constitutionally permissible for the Court to impose a tax and provide for the distribution of the funds raised through the tax, then, is our Legislature also within its constitutional authority to promulgate additional Disciplinary Rules and Ethical Considerations and standards of judicial and professional conduct for the members of the bench and bar of the State of Minnesota?

The Petition should be denied.

Respectfully submitted,



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OF COUNSEL:
ROBERT B. SNELL

December 28, 1981

Honorable Douglas Amdahl, Chief Justice
Honorable Associate Justices
Minnesota Supreme Court
State Capitol
St. Paul, MN 55155

81-1206

Re: In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of Rules Relating to Registration of Attorneys

Dear Chief Justice Amdahl and Associate Justices:

In response to our State Bar Association's Petition for a surcharge on all attorney and judiciary registration fees, I would like to express a serious concern many lawyers I have spoken to have for such a proposal. In essence, a common feeling, based on many past and present experiences, is that certain legal aid societies are doing much more than providing general civil legal services to indigent and disadvantaged persons. In reality, they are commencing both fee-generating cases and class-action matters wherein the class is made up of many more ineligible than elgible clients. These types of activities generally create most, if not all, of the following:

1. A "paper war", since the legal aid client(s) are not paying for their attorney's time. Numerous interrogatories, requests of admissions, production of documents, motions, etc., all constitute permissable discovery, yet are used to a much greater extent than than would be used if the client had the means to afford counsel. It is one thing to provide funds to allow indigent and disadvantaged persons the same access to the courts, yet quite another to give them a substantial advantage over the attorneys, and ultimately the clients who are being asked to subsidize these programs.

2. It is often times cheaper for a client to settle a case for nuisance value rather than proceed to defend a case, even if the case be without merit. In cases where attorneys fees are provided to the prevailing party, the legal aid attorneys often want a sizeable percentage of their time added to settlements. This puts the party represented by private

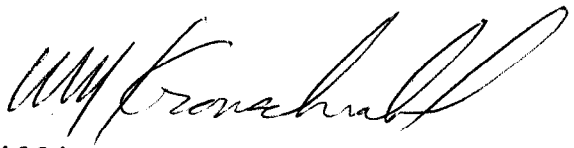
counsel in the position of either paying the extorted legal fees or spending substantial sums to defend themselves. One of several experiences I personally have had was where a legal aid attorney in a $1,000.00 case filed in the United States District Court, brought a partial summary judgment motion for $200.00, plus attorney's fees on that particular part of the Complaint. They then filed a 16-page brief and asked the Court for $1,075.00 in legal fees. Their motion was denied, yet our client was forced to spend several hundred dollars to defend. They would have been glad to pay the $200.00 as nuisance value, but such an option was not available as the attorneys fees were computed at $800.00 at the time the motion was served. While this is just one example of extreme abuse, I use it to express the concerns many lawyers share regarding the propensity for such inequality under the proposed subsidy plan.

I have seen several sides of this issue in my practice. I have served on the attorney referral panel in Ramsey County and I represent several clients, both individuals and businesses, that have been engaged in controversies where the other party was represented by a legal aid society attorney. Further, I am a part-time public defender in Ramsey County and have had several occasions to coordinate my efforts with those of a legal aid attorney handling a defendant's civil problems. I feel I can state that volunteer attorneys are not the problem. The real problem exists where the client gets a free attorney and that attorney is being paid on a salary basis. In the fee-generating type cases, there is then absolutely no incentive for that particular client or attorney to resolve the issue short of full litigation. Certainly, this is not the way legal disputes should be viewed.

We all recognize the duty of the Bar to provide access to all citizens to the Courts. Should the surcharge be adopted as proposed, we request this Court carefully define the permissable uses of the funds, both to avoid the above-mentioned types of abuses and to insure that the private bar will not lose prospective clients to legal aid programs they help subsidize. In furtherance of these concerns, I would be happy to serve on the proposed Advisory Committee on Legal Assistance.

Thank you for your consideration.

Respectfully submitted,



William M. Kronschnabel

WMK:cms
cc: Mr. Gordon Shumaker, President
Ramsey County Bar Association
Mr. Clinton A. Schroeder, President
Minnesota State Bar Association

December 29, 1981

Supreme Court
c/o John McCarthy
Clerk of Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

81-1206

RE: In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of Rules Relating to Registration of Attorneys

Dear Justices:

We are writing on behalf of Legal Assistance of Olmsted County with regard to the afore-mentioned proposed amendment. Our office is a locally organized and funded agency which provides legal services in non-fee-producing and non-criminal matters to low income clients in the Olmsted County area. We have several concerns about the terms of the proposed amendment.

While we are strongly in favor of proposals which will provide funding for legal services for indigent Minnesota residents, we disagree with the apparent emphasis of the proposed amendment. The wording of that amendment seems to confer favored status upon the federal legal services corporation, basically as a result of the composition of the Advisory Committee on Civil Legal Assistance which will be established. The proposal mandates that three of the attorney members of that committee should be nominated by the federal legal services corporation itself. In the likely event that the "client" members are also chosen from the federal program, that organization would, in effect, have a majority voice on that committee. We believe that such a result would be seriously prejudicial to the interests and rights of non-federally funded legal services offices.

It is our belief that the committee should be composed primarily of neutral attorneys and legal services attorneys and clients who represent organizations funded in the State of Minnesota. We further believe that offices that apply for funds should be judged on the basis of criteria other than the mere fact that they received funding through the federal legal services corporation. A single qualifying factor such as that ignores the offices that were established as a result of local committment and sacrifice, as well as factors such as numbers of clients served, community support, and fiscal efficiency.

While the amendment does not specifically delineate the method of distributing funds, we have been told that 85% of the funds will be distributed to federal legal services offices. While this may be mere rumor, we felt that the possibility of such an occurrence should be addressed. Not only would such an emphasis make it extremely difficult for offices such as our to receive funding, it would make it impossible for other communities to establish new offices and receive any financial aid.

We recognize the fact that the federal legal services corporation is facing serious financial problems. However, we do not feel that local funds should be set aside to rescue federal agencies at the potential expense of local organizations. Rather, we

believe that local money should support the establishment and continuance of community controlled offices. Local organizations such as ours also face the prospect of difficulty in obtaining continued funding. In addition, other sources of income, such as foundation grants, are difficult to obtain for on-going concerns. In effect, the amendment as proposed would penalize offices such as ours for not having had federal funding in the past.

We request that caution be used when selecting members of the Advisory Committee. Our organization would prefer to see the number of federal legal services attorneys and clients limited, rather than so severely limiting the input from non-federal offices. We feel that this concept is applicable to both attorney and client members of the committee.

We would further ask that the Court consider the possibility of other alternatives. One suggestion we discussed locally was to allow attorneys to pay the additional registration fee directly to their local offices. In addition, it may be helpful to attempt to compare programs that relied upon volunteers as opposed to those operating with a regular staff. If such figures were available it may aid planning for the future of legal services in Minnesota.

Our office will be sending a representative to the hearing scheduled for January 8, 1982. Thank you for your consideration.

Sincerely,

Jill A. Smith

Jill A. Smith
President, Board of Directors

Ruth Ann McCaleb

Ruth Ann McCaleb
Executive Director

RAM:vjt

(6)

Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

Re: In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of Rules Relating to Registration of Attorneys

81-1206

Dear Justices:

I have carefully reviewed the proposal of the Minnesota State Bar Association which proposes to increase attorney registration fees to assist funding the civil legal aid program. While a civil legal aid program may be a worthy endeavor, I oppose the proposed method of funding such a program.

Unlike criminal matters, there is no constitutional right to have an attorney appointed in civil matters. Consequently, the provision of attorneys for indigent and disadvantaged persons is most appropriately viewed as a social program. Social programs, however, are appropriately funded through taxes (such as income and property taxes) and voluntary contributions (such as charitable contributions). Social programs are not appropriately funded by means of licensing fees in lieu of taxes. Indeed, this Court has held that licensing fees, such as the attorney registration fee, cannot be used to raise taxes. Minneapolis St. Ry. Co. v. City of Minneapolis, 236 Minn. 109, 52 N.W.2d 120 (1952). Thus, I urge the Court to reject the Minnesota State Bar Association's proposal as an inappropriate

method of funding the civil legal aid program.

If the Bar Association is concerned about funding for the civil legal aid program, I suggest that it contact its statewide membership and seek voluntary contributions or use its status to convince the Legislature that the program warrants the support of tax dollars. Either of these two alternatives provide an appropriate method of funding a social program.

While I cannot attend the January 8, 1982 hearing because of a conflict in my schedule which I cannot change, I request that the Court include this correspondence in the record of this matter. I further urge the Court to reject the Bar Association's proposal in light of the Court's prior decisions.

Respectfully submitted,

Charles T. Mottl, Esq.
1270 W. Ryan Ave.
St. Paul, Minn 55113
(612) 644-6543
Dec. 30, 1981

(7)

STATE OF MINNESOTA

IN SUPREME COURT

In the Matter of the Petition
of the Minnesota State Bar
Association, a Corporation, for
Amendment of Rules Relating to
Registration of Attorneys

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF

THE STATE OF MINNESOTA: 81-1206

I wish to express my vehement opposition to the petition of the Minnesota Bar Association to Amend Rule 2 of the Rules for Registration of Attorneys to impose a surcharge on the 1982 attorney license fee, for the following reasons:

1) The surcharge, while nominally a license fee which the Court may legally impose pursuant to authority granted by the Legislature, is in fact a tax levied in order to provide legal assistance (either directly or indirectly) to individual Minnesotans. The judicial branch of government has no authority, under the Minnesota Constitution or any statute, to levy any tax for this or any other purpose.

2) The surcharge is beyond the legislated authority of this Court, because there is no rational justification for the surcharge as a means of establishing or maintaining the competence and integrity of the legal profession. The provision of legal services to indigent clients (or to any person or group of persons) is totally unrelated to maintaining or improving an attorney's legal skills or assuring his compliance with the Disciplinary Rules of the Code of Professional Responsibility. These are the only two purposes which the Legislature authorized this Court to address in the setting of the Rules for Registration of Attorneys (and, concomitantly, the attorney registration fees).

In sum, I sincerely believe that the proposed surcharge is both contrary to the law and ill-advised public policy vis-a-vis the admittedly worthy purpose which its proponents seek to serve.

I therefore urge the Court to reject the Petition.

Respectfully,

Richard P. Osborne

Dated: December 29, 1981

Richard P. Osborne
Attorney at Law
3015 - 43rd Avenue S.
Minneapolis, Minnesota 55406

(8)

DENNIS G. DRAPER ELECTRIC CO.
P. O. BOX 212
MANKATO, MINNESOTA 56001
TELEPHONE (507) 625-5289

December 29, 1981

TO: The Honorable Justices of the Supreme Court
of the State of Minnesota
St. Paul, Minnesota

IN RE: Petition to Add Surcharge to Attorneys' Fees
Your File No. 81-1206

Honorable Justices:

I am writing to you as an electrician and electrical contractor. After the death of my father, Howard Draper, I took over his electrical business and have been operating it on my own for approximately twelve years.

My attention was drawn to the proposed surcharge on attorneys' licenses by an editorial which appeared in the December 10, 1981 edition of the Mankato Free Press. I am enclosing a copy of that editorial. After reading it, I talked to my attorney, Michael Regan, about this proposal and voiced my objections to him. He suggested that I direct my objections to the Supreme Court.

It is my understanding that the Minnesota Supreme Court acts as the licensing board for attorneys in Minnesota. If this is the case and if the surcharge is imposed, I am fearful that it will give a clear indication to all other licensing boards that they are free to also impose a surcharge of whatever amount they may see fit to fund some social service program connected with (or maybe not even connected with) the profession they are licensing. Someone could very easily make a strong case that poor people have a greater need for electricity, gas, sewer and water, etc., than they do for legal services and decide that plumbers and electricians should have to pay a surcharge with their license to set up special electrical and plumbing shops to provide free services to poor people.

I have a great deal of sympathy for the poor and underprivileged and feel that, if they are unable to provide for themselves, then society as a whole should provide for their basic needs. I am not particularly sympathetic with any lawyer who may happen to claim that $25.00 would be an unreasonable financial burden. I am very fearful, however, that what you are being asked to do will be watched closely and probably followed quickly by other licensing authorities in Minnesota. I really think that this surcharge is a tax that should not be imposed by any licensing authority. I feel that whatever goods or services are needed by the poor should be

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provided generally by taxes which are raised statewide. Otherwise, we will be simply compounding the bureaucracy and could wind up with one set of criteria for free legal services, another set of criteria for free electrical services and another set of criteria for free plumbing services and on, and on, and on.

I have never been in court before and I have never done any public speaking, but I would like the opportunity to speak to you on this subject at the hearing on January 8, 1982. Would you please let me know if I will be allowed to speak on that day, so I can be sure to be present.

Sincerely,

Dennis G. Draper

DGD/pse

Enclosure

Opinions

No to legal aid surcharge

With the coming of Ronald Reagan to the White House, 1981 has not been a vintage year for government legal aid lawyers. The budget cuts of last summer slashed funding for the federal Legal Services Corp. by 25 percent, which, in turn, sent legal aid officials scrambling in search of new sources of funds.

The search has led legal aid officials to solicit private donations. It has led them to lobby other government agencies for public funds. And next month it will lead them to the Minnesota Supreme Court.

The Minnesota State Bar Association (to which not all Minnesota lawyers belong) is petitioning the state high court to add a $25 surcharge onto the mandatory annual registration fee that all lawyers must pay in order to practice law in Minnesota. The proceeds of the surcharge would go to a nine-member Advisory Committee on Civil Legal Assistance, whose membership would include seven legal aid lawyers and two legal aid clients. The committee would disburse the funds to various legal aid organizations around the state.

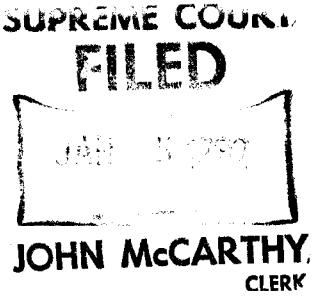
Strong arguments, both pro and con, swirl around legal aid, particularly since the Legal Services Corporation was passed into law in 1974. Proponents of legal aid argue correctly that no one in need of a lawyer's services should be denied those services because of poverty. They back up their argument with such surveys as the one taken by the American Bar Association in 1977 which found that only 35.8 percent of the adults surveyed had ever consulted a lawyer and only 27.9 percent had ever retained one. The survey found that one of the major reasons the majority did not seek legal aid was because of the cost of legal services. Sixty percent of the respondents agreed with the statement: "Most lawyers charge more for their services than they are worth."

But area lawyers opposed to federally-funded legal aid say that before the Legal Services Corp. came along, the poor were receiving legal aid. In many communities in southern Minnesota, the local bar association assigned the cases of the indigent on a rotating basis. Criticism of the Legal Services Corp. has come from outside the legal profession as well — with numerous complaints being voiced that LSC lawyers have gone beyond providing basic legal services to the poor and become advocates for social change. Charges of entrapment have resulted from some cases. Others are bothered because federally-funded LSC lawyers sue the federal government. They suggest that it doesn't make much sense for the government to fund its legal opponents.

The arguments pro and con aside, the surcharge on Minnesota's lawyers appears to set a dangerous precedent. To be sure, most lawyers could afford the surcharge. (They already pay $45 per year.) Most lawyers make better than average livings at their profession, so it would not be an economic hardship. The point is, however, by asking lawyers to fund legal services for the poor, we are setting a precedent whereby we could force, through license fee surcharges, electricians to provide electrical services to the poor, teachers to provide the financing for Head Start programs, or even grocers to provide food.

As a society, if the majority decides through our elected representatives to provide services to the poor, then society as a whole ought to pay for it. The burden should not fall on specific groups or interests. If society chooses not to fund certain services, then it is up to the individual consciences of those who provide such services to determine how much time or money to donate voluntarily to the poor. The surcharge before the Supreme Court would be mandatory, however, and that could set an unwieldy precedent.

STATE OF MINNESOTA
IN SUPREME COURT
#81-1206



In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of Rules Relating to Registration of Attorneys.

BRIEF OF CARL W. S. PELTONIEMI

IN OPPOSITION TO PETITION

The undersigned is a duly registered practicing attorney, admitted to practice law in the State of Minnesota and is now practicing in a three man law firm with offices at Wadena and New York Mills. The undersigned opposes the Petition of the Minnesota State Bar Association requesting a surcharge on the registration fees imposed upon practicing attorneys in the State of Minnesota.

As the Court perhaps is well aware, several counties in northwestern Minnesota are organized under the Northwest Minnesota Legal Services Corporation (NMLS) under a plan to furnish legal services to disadvantages persons by utilizing attorneys in private practice who voluntarily take part in the program. The participating attorneys are in some instances paid a fee which approximates the average overhead cost of the participating attorney in the delivery of legal services. In the calendar year of 1981 the attorneys in the undersigned firm have been paid at the rate of $30.00 per hour for services rendered to disadvantaged persons with specific fees being set for some services.

The undersigned is informed by said NMLS that it has approximately 200 attorneys who actively participate in the program.

In calendar year 1981 the three lawyers in the undersigned's firm have furnished in excess of 250 hours of services under itemized billing to NMLS being reimbursed on the basis of the office overhead expense of operating a law office. If a greater number of attorneys either in our area or in our state were likewise furnishing legal services at cost to the disadvantaged, we certainly would not have any objection to sharing the registration fee surcharge with them. However we are confident that the percentage of attorneys furnishing legal services to disadvantaged at cost is substantially less than a majority of the registered practicing attorneys in the State of Minnesota.

In the case of Wadena, in addition to the undersigned's office, there are two other law offices. One firm has five attorneys and the other is a sole practicioner. However, our firm is the only Wadena law office now participating in the NMLS program. It is not the undersigned's intention to flaunt a self-proclaimed community spirit in pointing out these statistics. While we have not been happy to be the only participating office in the community, we have accepted this role, hopefully on a temporary basis.

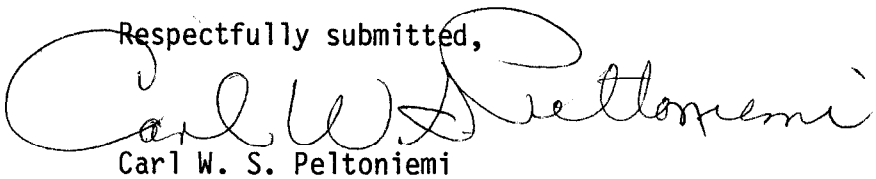
However, if we are to be required to pay a surcharge in addition to the sacrifice of "take home" compensation for a substantial number of hours of services, one cannot help but feel we are being taken advantage of, and that undoubtedly many participating attorneys will find reason to reconsider participation in what appears to be a very significant community service by this segment of the Minnesota Bar.

I would like to emphasize that this appearance is not made solely to save myself $25.00 but rather to call to the Court's attention a potentially serious detriment by the imposition of the surcharge which does not take into consideration a substantial community service now being rendered by a number of attorneys.

Likewise I feel that it is not proper to object to what might be a worthy cause without offering an alternative proposal. I would suggest that if the Court is inclined to impose a surcharge upon attorney's registration fees, then it would be reasonable that those attorneys who participate in an approved legal service program should be exempt from payment of the surcharge. The Court's Advisory Committee on Civil Legal Assistance could easily determine which programs were to be approved and could also confirm the identity of participants. The Court could readily establish the minimum number of hours contributed by an attorney to meet the criteria of the exemption. The participating attorney could readily file an affidavit at the time of registration which would identify his participation with a particular legal assistance program.

Naturally the $25.00 saved by a participating attorney will not begin to reimburse him for the value of the take home commensation he is losing by participating in legal assistance programs but at least the suggested exemption would be a recognition by the Court that this form of communtiy service is meritorious and hopefully a step in the direction of a more meaningful pro bono program by lawyers in the State of Minnesota.

Respectfully submitted,



Carl W. S. Peltoniemi
Box 231
Wadena, MN 56482
(218) 631-3454

MINNESOTA MINING AND MANUFACTURING COMPANY

OFFICE OF GENERAL COUNSEL

3M CENTER • P. O. BOX 33428 • SAINT PAUL, MINNESOTA 55133

GERALD A. REGNIER
SENIOR ATTORNEY

TEL. AREA (612) 733-5509

December 30, 1981

John C. McCarthy
Clerk of the Minnesota
Supreme Court
230 State Capitol Building
Saint Paul, Minnesota 55155

Dear John:

This will confirm those appearing in support of the Petition of the Minnesota State Bar Association for amending the Rules Relating to Registration of Attorneys, scheduled for 9:00 a.m. on Friday, January 8, 1982, in the Supreme Court Chambers.

Association President Clinton A. Schroeder will present the Petition in behalf of the Association, with brief comments from either Stephen P. Rolfsrud or from me, as Co-Chairman of the Legal Services to the Disadvantaged Committee. James L. Baillie, Chairman of our Legal Practice Subcommittee, will make a short statement concerning the ethical dimension of this Petition.

Roger V. Stageberg and Elmer B. Trousdale, as Chairmen of the comparable Hennepin and Ramsey County Committees, will state the concurrence of their respective Associations.

Bruce A. Beneke, Executive Director of Southern Minnesota Regional Legal Services, will be available with the rest of us to respond to specific questions.

Enclosed is a two-page summary of the effects in Minnesota of the final 25% cut made by Congress in the budget of the National Legal Services Corporation.

Best Wishes for the New Year.

Sincerely,

Gerald A. Regnier

GAR:bc
Enclosures: Summary (10 copies)
Letter (10 copies)

EFFECT OF FUNDING CUTS ON MINNESOTA LEGAL SERVICES PROGRAMS

Funding for Minnesota's six regional civil legal services programs through the national Legal Services Corporation will be cut by 25% from 1981 levels in 1982. This represents a loss of at least $1 million of the $6 million in funding (including funding from non-LSC sources) on which the programs operated in 1981. When the effects of inflation are taken into account, the LSC cut alone will reduce the programs' 1982 funding by at least 35%.

This paper summarizes the expected effects of the LSC cuts on staffing, number of offices operated, and number and types of cases which can be handled, by Minnesota's six programs in 1982 and succeeding years.

BACKGROUND

In 1981, before the funding cut, Minnesota's legal services programs were able to provide the equivalent of one full-time attorney for every 5,000 eligible low-income persons in the state, with eligibility set at an annual income of less than $10,583 for an urban family of four. By way of comparison, there is now one Minnesota lawyer for every 350 people in the general state population.

Even at the 1981 funding level, Minnesota's programs were able to meet only about 25-30% of the need for legal services among the eligible client population. Currently, an estimated 425,000 Minnesotans (10.4% of the state's population) have incomes low enough to qualify for free legal assistance. About 160,000 of these people (4% of the population) are aged 60 or older.

In 1980 and 1981, Minnesota's programs advised or represented about 43,000 clients annually. Of these cases, 28.2% were family law matters, 16.3% housing, 15.3% welfare, 14.6% consumer. The remaining cases involved education, employment, juvenile, health, individual rights, tort defense, wills, and other miscellaneous problems.

EFFECT OF CUTS ON STAFF, NUMBER OF OFFICES, NUMBER OF CLIENTS SERVED

Throughout Minnesota, legal services programs will be operating with sharply reduced staffs in 1982. The programs have lost 38 of 122 full-time attorneys (31% reduction), with corresponding reductions in paralegal and clerical staff. Four of the 26 offices in place at the beginning of 1981 have closed or will close early in 1982. These reductions will result in about 10,300 fewer cases receiving service in 1982.

Southern Minnesota Southern Minnesota Regional Legal Services has reduced its staff from 45 to 28 attorneys (38% loss). One of St. Paul's three local offices has been closed. In 1982, two rural offices of SMRLS (Carver, and Albert Lea) will have only one attorney on staff. A final decision whether to close the Carver and Albert Lea Offices will be made by July 1, 1982. These cuts will result in an estimated 5,700 fewer people receiving service in Southern Minnesota in 1982, down from the 1981 case total of about 15,000.

Central Minnesota All offices of the Central Minnesota Legal Services program (Minneapolis, St. Cloud, Little Falls, Willmar, Marshall, and Cambridge) will remain open in 1982. However, the program has lost 16 of its 58 attorneys (28% reduction). The Anoka Judicare program has lost paralegal support staff in 1981. Overall, an estimated 3,200 fewer people will receive service in central Minnesota in 1982, down from the 1981 total of about 20,000.

Northeast Minnesota Legal Aid Service of Northwestern Minnesota has closed its West Duluth Office, and part-time branch offices in Hibbing, Pine City, and Grand Rapids. The program has lost 4 of its 15 attorney positions (27%). Anishinabe Legal Services of Cass Lake will not be able to fill one of the four attorney positions for which it was funded in 1981, and may lose additional staff in 1982. Overall, the programs will be able to handle about 750 fewer cases in 1982 than in 1981, when the total was about 5,500.

Northwest Minnesota Northwest Minnesota Legal Services, a Judicare Program headquartered in Moorhead, has lost 8 of the 12 support staff who provided research and back-up to the program's local attorneys in 1981. Reduction in LSC funds will reduce the number of cases which can be contracted for by the program by at least 650 of 2,500 cases.

EFFECT OF CUTS ON TYPE OF CASES TO BE HANDLED

During 1981, Minnesota's legal services programs completed the difficult process of deciding which types of cases they could, and could not, continue to handle if funding and staff were reduced in 1982. The specific policies adopted vary from program to program, but all programs will be turning away clients in 1982 who would have been served in 1981.

In 1982 and succeeding years, Minnesota's programs will generally give priority to cases:

1. which involve clients' basic survival needs (food, shelter, income, medical care, protection from physical abuse) or involve an emergency; and
2. where no other source of legal assistance (such as a volunteer attorney program) is available, or the case involves a type of legal issue (such as complex welfare or public housing regulations) not ordinarily handled by non-legal services lawyers in the program area.

Adoption of this standard means that many classes of cases which Minnesota's programs have handled in large numbers in the past can no longer be accepted, or accepted only on a case-by-case basis in unusual circumstances. The most important example is marriage dissolution. Minnesota's legal services programs handled, or provided advice in, nearly 7,500 dissolution cases last year. Several programs have eliminated their dissolution practice entirely; the others are reducing their intake in this area. Overall, probably no more than 1,000 dissolution matters will be handled by the Minnesota programs in 1982.

Other types of cases in which legal services intake will be eliminated or cut back in many areas include: wills and probate (about 2,400 cases annually in recent years), child custody (1,500 cases), child support (700 cases), defense of debt collection and repossession (1,500 cases), adoption and name changes (350 cases), and Social Security or other government benefits cases where other income or other sources of representation may be available to the client (about 1,500 cases).

(10)

STATE OF MINNESOTA
IN SUPREME COURT

In the Matter of the Petition
of the Minnesota State Bar
Association, a Corporation, for
Amendment of Rules Relating to
Registration of Attorneys

BRIEF

81-1206

The Olmsted County Bar Association at a meeting held December 9, 1981, took the following position with respect to the proposed Amendment of Rule 2 of the Rules for Registration of Attorneys:

1. The Olmsted County Bar Association supports the proposed surcharges as a means to fund legal service programs.

2. We object to the proposed qualifications for membership on the Advisory Committee. Three attorney members are to be nominated by programs operating with funds provided by the Federal Legal Services Corporation. Those three members, together with the two persons qualifying as eligible clients, would constitute a majority of the Committee, and as such would have a vested interest in perpetuating the existing structure.

For many years, Olmsted County has had a successful Legal Assistance Program with a full-time attorney. That program had been funded exclusively from local funds including those of the County, United Way, and the Olmsted County Bar Association. This program has not received any financial assistance from the Federal Legal Services Corporation. We understand there are similar programs elsewhere in the state. It would therefore seem appropriate that at least one attorney member be nominated by Legal Assistance Programs which are not presently funded by the Federal Legal Services Corporation. We believe this would provide an informed perspective for the development of locally operated programs.

3. We also object to that portion of the Rule which deals with disbursement of funds. By limiting the funding to existing programs, there is no basis for providing "seed" money, matching grants, or operational funding for local programs similar to that now existing in Olmsted County. A majority of the proposed membership of the committee have a self interest in existing programs with little incentive to establish other programs which would compete for funds. While some of the funds

must be used to promote local volunteer programs, that falls short of promoting programs such as we have in Olmsted County. Locally controlled programs are best able to meet local needs.

We do not desire to be heard orally.

Respectfully submitted,

OLMSTED COUNTY BAR ASSOCIATION

By _____
Richard H. Bins, President

(11)

LAW OFFICES
PELTONIEMI, JOHNSON & MAJORS, LTD.

CARL W. S. PELTONIEMI
DOUGLAS H. JOHNSON
B. JOSEPH MAJORS, II

BOX 231
WADENA, MN 56482
(218) 631-3454

January 4, 1982

Clerk of the Supreme Court
Minnesota State Capitol
St. Paul, MN 55155

Re: Petition of Minnesota State Bar
Association for Amendment of Rule
Relating to Registration of Attorneys
Case #81-1206

Dear Clerk:

Because of Mr. Peltoniemi's illness he will not be present at the hearing set for January 8, 1982 per his letter of December 30, 1981.

Very truly yours,

Douglas H. Johnson

J:ie

copy to Marshal

STATE OF MINNESOTA

IN SUPREME COURT

No. 81-1206

In the Matter of the Petition of the Minnesota State Bar Association, a Corporation, for Amendment of Rules Relating to Registration of Attorneys.

O R D E R

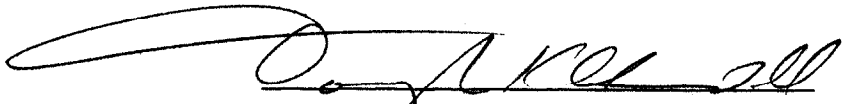
WHEREAS, the Minnesota State Bar Association petitioned the Supreme Court to amend Rule 2 of the Rules for Registration of Attorneys to impose a surcharge upon all attorney registration fees otherwise due and payable pursuant to this Rule in the year 1982 in order to maintain and improve delivery of attorneys' services in civil matters to indigent and disadvantaged residents of Minnesota, and

WHEREAS, the Supreme Court held a public hearing on this petition in the Supreme Court Chambers in the State Capitol, Saint Paul, Minnesota, at 9 a.m. on Friday, January 8, 1982.

NOW, THEREFORE, IT IS HEREBY ORDERED that said petition is denied.

Dated: February 22, 1982.

BY THE COURT



Chief Justice