OPINION OF ACOBA, J.,
CONCURRING IN PART AND DISSENTING IN PART

I agree that there was an abuse of discretion in reducing Petitioner's request for attorneys' fees of $1,412.00 to $292.00 because, in my view, the latter amount fails to adequately compensate Petitioner for legal services rendered. Having advocated the award of $614.00, I have no objection to the adoption of that amount by the majority, but I do not concur in the majority's characterization of Petitioner's efforts. Finally, I believe the effective administration of criminal justice requires that the hourly remuneration for court appointed counsel be increased.

I.

Petitioner claims he made a "bare bones" request without "detail[ing] all the time [he] spent representing [his client]" in hope of receiving prompt compensation.[1] He asks "in

[1] In his declaration, Petitioner states in part as follows:

> 12. I submitted a "bare bones" request for attorney's fees because I was in desperate need of some immediate income to pay for my son's tuition. . . . If I meticulously detailed all of the time I spent representing [the defendant], I submit the total would be at least twice the amount requested. I did not keep track of the numerous phone conversations I had with [the defendant], nor the time I spent talking about the case with other counsel or all the time spent perusing the record to find any issue at all that merited an appeal[.]

Petitioner also claimed that he provided the defendant with "substance abuse counseling" even though he was "aware [that he] was not appointed and would not be paid for [this] extra legal work."

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all fairness . . . whether [his] representation over a year and a half was indeed worth only $292.00." I must agree in part with Petitioner's plaintive inquiry. No matter how inadequate some may think his final product was, I consider $292.00 patently unreasonable in light of the voluminous record involved,[2] the number of attorneys who had previously represented the defendant and withdrawn,[3] the burden of communicating with an imprisoned client,[4] and Petitioner's apparent futile search for an appealable issue.[5] In sum, this case is one in which appointed

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[1](...continued)

In closing, Petitioner's declaration states:

> 14. I admit that I am not God's gift to the legal profession[.] . . . However, "fair is fair" and an award of $292.00 for all the work I did in this case is not fair.

[2] Paragraph 13 of Petitioner's declaration states:

> 13. I simply ask the [c]ourt to take a look at the lower court record, the volume of the record, the substance of the appellate pleadings I filed, and the machinations of the [d]efendant[.] . . . Then in all fairness, determine whether my representation over a year and a half was indeed worth only $292.00. I have no idea how the [ICA] arrived at that arbitrary figure.

[3] In his declaration, Petitioner asserted that he has "gained a reputation for handling difficult defendants[,]" however, "[i]n [his] almost 25 years of practice, [the defendant in the present case] was, if not the most difficult client, at least in the top three."

[4] Petitioner made numerous telephone calls to his client. See supra note 1.

[5] Petitioner maintains he searched the record to find an appealable issue, but was unsuccessful:

> 4. . . . I reviewed the entire lower court record to determine the issues on appeal, in addition to reading the transcripts of proceedings below;

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counsel represents he has perused a voluminous record in an unsuccessful attempt to find an appealable issue, but has filed an appeal because he was required to do so. Under such circumstances, the hours reasonably incurred in representation and not the brevity of his appellate filings would be the appropriate measure of fair compensation.

Moreover, the fees allowed Petitioner roughly correlates to one-fourth of the maximum amount of $2,500.00 designated for appellate representation. From a broader perspective, this appears to fall within a reasonable range, as gauged by the maximum allowable fee and, thus, in my view, further validates the total of $614.00. In deciding the attorneys' fees to be awarded, all that is required is a straightforward assessment of whether the amount approved is reasonable in light of the representation afforded, objectively

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6. . . . The evidence against [the defendant] was overwhelming from the outset. The lower court record is replete with one frivolous motion after another -- all designed simply to toy with the courts and delay the inevitable outcome;

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8. . . . I have on more than one occasion attempted to inform the [c]ourt that [the defendant's] appeal was frivolous and that he was simply litigious -- the whole judicial process was a game to him, to be played because he had nothing better to do with his time and it was a way that his existence would be recognized;

9. I even convinced him to withdraw his appeal and he agreed to do so in writing.

viewed. I see nothing to be gained from any characterization of counsel's efforts whatsoever and do not join in such parts of the majority's opinion.

II.

The sea change wrought by affording attorneys the right to appeal fee awards bears directly on the adequacy of statutory fee schedules. The amount granted Petitioner, of course, is computed at hourly rates adopted fourteen years ago but still in effect. See Hawai'i Revised Statutes (HRS) § 802-5 (1993). In that regard, the ABA Standards for Criminal Justice - Providing Defense Services (2d. ed. 1986) (hereinafter ABA Standards) maintain that appointed counsel should be paid "at a reasonable hourly rate" because

> it is simply unfair to ask those lawyers who happen to have the skill in trial practice and familiarity with criminal law and procedure to donate time to defense representation. . . . Indeed, where payments for counsel are deficient, it is exceedingly difficult to attract able lawyers into criminal practice and to enhance the quality of the defense. But most important, the quality of the representation often suffers when adequate compensation for counsel is not available.

Commentary to ABA Standards, Standard 5-2.4, at 5-32.

The hourly rate under HRS § 802-5 is no longer reasonable and, although applicable under present guidelines, the compensation extended Petitioner is not adequate by any realistic

measure.[6] Insofar as compensation is inadequate, those attorneys who represent indigent clients, in effect, personally subsidize the financial obligation imposed upon the State by the United States and Hawai‘i constitutions' mandate that such defendants be represented by counsel.

Realistically, that obligation is not met if private counsel are faced with substandard remuneration under an outdated fee schedule and with grudging fee evaluations by the courts. To place such a burden on private counsel is simply unfair to counsel, may redound to the detriment of the client, and only postpones responsible funding of legal services. As the ABA Standards point out, inadequate compensation also discourages lawyers from entering criminal practice. See id. More significantly, experienced counsel are discouraged from accepting appointed cases because they are financially incapable of affording clients suitable advocacy under the existing fee schedule. See id. While there may be counsel willing and capable of shouldering financial burdens incurred by such representation on an ad hoc basis, that cannot substitute for a

[6] HRS § 802-5(b)(6) also governs with respect to fees allowed in "[a]ny other type of administrative or judicial proceeding including cases arising under chapter 571[.]" In part, the necessity for increasing fees for criminal cases denominated in HRS § 802-5(b)(1)-(5) is warranted not only by contemporary measures of compensation, but by the nature of criminal law practice itself, the increased complexity of the criminal law since the schedule was last amended, and the professional burdens of practice in an area of law unavoidably fraught with allegations of ineffective assistance.

uniform, comprehensive system in which adequate compensation is guaranteed to all appointed counsel.

We should heed, then, the ABA Standards' reprobation that when compensation is not reasonable, the "quality of the representation often suffers." Id. See State v. Ui, 66 Haw. 366, 370, 663 P.2d 630, 632, reconsideration denied, 66 Haw. 366, 663 P.2d 630 (1983) (stating that "[o]ne of the reasons for requiring that assigned counsel be reasonably compensated is to assure quality representation for indigent defendants" and that this concern "flows from the constitutional right to effective assistance of counsel"). Such a circumstance cannot but have an adverse effect on the administration of justice in our criminal law system.

The viability of that system should be of significant concern to the public, see Gentile v. State Bar of Nevada, 501 U.S. 1030, 1035 (1991) (recognizing that the criminal justice system plays a vital role in a democratic state and that the manner in which criminal trials are conducted is of utmost concern and importance to the public), but no less so than it should be to the judiciary. Responsibility for the administration of criminal justice in this state ultimately rests with this court.[7] However, some measure of that responsibility

[7] The official position of the Judiciary, represented through its administrative arm, has not been to submit its own bill or proposal for amendment of the statutory fee schedule, but only to support the efforts of

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must fall on the Bar as a whole. Indeed, by Rule we have directed that

> [t]he purposes of the Hawai‘i State Bar shall be to aid the courts in regulating, maintaining and improving the legal profession, administration of justice and advancements in jurisprudence, in improving relations between the legal profession, the public and the various branches and instrumentalities of government in this State, and in promoting the interests of the profession in this State.

Rules of the Supreme Court of the State of Hawai‘i Rule 17(b) (emphases added). Consistent with the purposes stated, it is incumbent upon the Hawai‘i State Bar Association "to aid the courts . . . in improving the legal profession," the "administration of justice," and "relations between . . . the various branches . . . of government" by working toward revision of the appointed counsel fee schedule.[8] Id. As with other "responsibilities" given it, the Bar, in a large sense, has "as its goal the improvement of the practice of law and the standards of professionalism of all attorneys" in this State. Id. (emphasis added). In endeavoring to achieve that goal, it promotes the highest values of the law and of our judicial system. Like other courts, we may appropriately bring such matters to the attention of the Bar. See In re Estate of Williams, 182 So.2d 10, 13 (Fla. 1965) (stating that "[i]f this

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[7](...continued)
others to revise the fee schedule. This approach, to date, has obviously been ineffectual.

[8] Failing that, or until then, the members of the Bar might share in shouldering the substantial burden of providing counsel in all criminal cases not assigned to the public defender's office.

case accomplishes nothing more than to call attention to the inadequacies of [statutes,] it will have served a useful purpose" and that "[the court] ha[s] no doubt that the appropriate committees of The Florida Bar and the Legislature will give attention to making the changes which are necessary to make [the statutes] clear"); Jones v. Hoffman, 272 So.2d 529, 531 (Fla. App. 1973) ("As exhausting as this opinion has been to prepare, and will be to read, it will be worthwhile if it serves to focus the attention of the bar, the bench, and the legislature on this problem [of the complexity of a comparative negligence system] and bring about action to eradicate one of the worst tangles known to law.") (internal quotation marks and footnote omitted); Tatelbaum v. Commerce Inv. Co., 262 A.2d 494, 498 (Md. 1970) ("invit[ing] the attention of the Legislature and of the Bar to the fact that the form of [a secured transaction statute] adopted in Maryland h[a]s produced [a problem] . . . which calls for prompt correction by legislative action"); Lovorn v. Hathorn, 365 So.2d 947, 952 (Miss. 1978) (en banc.) ("call[ing] attention of the Bench, Bar and Legislature to the question (which [the court] do[es] not decide) presented by the one-man one-vote rule which may affect fifty-two (52) municipal separate school districts in the State of Mississippi"); Jordan Developers, Inc. v. Planning Bd. of City of Brigantine, 607 A.2d 1054, 1057 (N.J.Super. 1992) ("discuss[ing] . . . matters [not raised by parties] only to call

the attention of the Bar and Legislature to them, in the hope that statutory rectification might be considered"); Kaminski v. Kaminski, 366 N.Y.S.2d 848, 849-50 (N.Y.Sup. 1975) (holding that absent statutory authority, the local government is not obligated to compensate assigned counsel for an indigent party in a matrimonial action, but "recommend[ing] that an appropriate committee of the Bar Association direct the legislature's attention to the problem presented" and noting that "[the court is] certain that after a study of the problem in all its ramifications, the legislature will provide an adequate remedy through enabling legislation to insure the protection of the indigent and compensation for cooperating attorneys in these cases").

Lastly, where it becomes apparent that the proper administration of justice may suffer from inadequate funding and that issue is germane, as it is here, to the case before us, it is our obligation, if not duty, to make that known to the other branches of government, see cases cited in the concurring opinion of Ramil, J., and affected entities[9] inasmuch as we, more than

[9] In opinions, other courts have also noted matters of law for consideration by other entities. See Goebel v. Colorado Dept. of Institutions, 764 P.2d 785, 801 (Col. 1988) (discussing care of chronically ill patients under the Care and Treatment Act, under which plan for care could be implemented until the appropriated funds ran out, and "defendants then would have had the obligation to bring to the legislature's attention the inadequacy of the funding to satisfy the plaintiffs' rights"); Milmir Const. v. Jones, 626 So.2d 985, 987 (Fla. App. 1993) ("bring[ing] th[e] problem [of lack of statutory authority for disqualification of judges of compensation claims] to the attention of the Florida Legislature and the members of the

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any other body, would be most knowledgeable of such matters. See State v. Rush, 217 A.2d 441, 449 (N.J. 1966) ("We do no more than recognize the desirability, in the public interest, for an opportunity for the other branches of government and the agencies concerned to consider the problem."). In that context, no more appropriate avenue for the discharge of our individual judicial obligations exists than through our written opinion. The choice and wisdom of exercising that prerogative must rest with each justice and no justice should shirk from exercising that judicial prerogative or be deterred by any veiled attempt to muzzle such expression.

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Florida Workers' Compensation Rules Committee" and "strongly suggest[ing] that they should consider enactment of law and promulgation of rule, respectively, to guide the trial bench and bar as well as this court when considering disqualifications of judges of compensation claims"); Singletary v. Carpenter, 705 So.2d 110 (Fla. App. 1998) ("If [the court's construction of a statute based on its plain language" is inconsonant with the true legislative intent, we point out this apparent anomaly to interested parties to bring to the legislature's attention.").