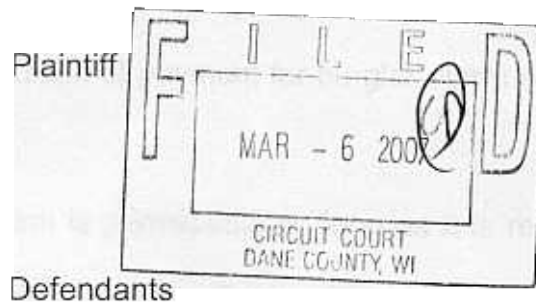


STATE OF WISCONSIN,

vs.

SCOTT R. JENSEN,  
STEVEN M. FOTI  
SHERRY L. SCHULTZ02CF2453 ✓  
02CF2454 ✓  
02CF2455 ✓

**STATE'S MOTION FOR AN ORDER REQUIRING REIMBURSEMENT OF  
LEGAL FEES TO THE STATE AS A CONDITION OF SUPERVISION**

The State of Wisconsin, by and through its attorneys, Dane County District Attorney Brian W. Blanchard, and Dane County Special District Attorney Roy R. Korte, respectfully submits this motion in support of an order that each defendant, as a condition of probation or supervised release, reimburse the state for legal fees in this investigation paid by the state.

The Chief Clerk of the Assembly made the following payments of taxpayer funds to attorneys representing the defendants in these matters: Jensen, \$67,147.40; Foti, \$27,981.75; and Schultz, \$68,629.03. The court explicitly postponed consideration of the attorneys' fees issue at the time of sentencing to a later date. Judge Nichol, as arbitrator, identified these legal fees as obligations of the defendants that Judge Nichol considered in making large discounts in his restitution awards, which were adopted by this court.

Defendant Foti agreed to pay this money in paragraph 17 of his written plea agreement. Based on all the evidence before the court, that would be an appropriate condition. See *State v. Heyn*, 155 Wis. 2d 621, 456 N.W. 2d 157

(Wi. 1990) (Circuit courts have “broad authority to condition probation on satisfaction of any reasonable and appropriate requirement under sec. 973.09(1)(a); approving condition of payment for burglar alarm even though not a proper subject of restitution).

A condition of probation is permissible so long as it is reasonably related to the defendant's rehabilitation. *State v. Oakley*, 2001 WI 103, ¶19, 245 Wis. 2d 447. As this court noted at sentencing, the defendants' crimes involved “harm to our legislative process and to the integrity of Wisconsin's government.” (195:20) The condition is rehabilitative, because it will help the defendants to understand the full extent of the harm caused by their crimes, and it will teach them to consider the consequences of their conduct more carefully in the future. See *State v. Beiersdorf*, 208 Wis. 2d 492, 503, 561 N.W. 2d 749 (Ct. App. 1997). Furthermore, the condition is rehabilitative because it may help dissuade the defendants from allowing themselves to be in situations that might encourage them to engage in criminal conduct again.


As further authority, pursuant to Wis. Stats. § 973.09(1g), if a trial court places a person convicted of a crime on probation, the court may require that “the probationer reimburse the county or the state, as applicable, for any costs for legal representation to the county or the state for the defense of the case.”

These were funds paid by the state to fund unsuccessful defenses. It is money owed to the public. It is a valid rehabilitative purpose to require the defendants to repay this money during and as part of supervision.

For these reasons, the court should order each defendant to repay the state in full for these legal fees as conditions of their respective supervision periods.

Dated at Madison, Wisconsin, this 6<sup>th</sup> day of March, 2007.

Respectfully Submitted,



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