is not due to any differences in California's relation to the conduct of insurers transacting business in the state[143] but is due solely to the differing residencies of the corporations.[144] The Court in *Wheeling Steel Corp.* invalidated a state tax on equal protection grounds, yet here, despite the majority's own favorable quotation of the rule in *Wheeling Steel Corp.*,[145] the Court sustained California Insurance Code section 685 against the same challenge.

Glenn S. Hansen

143. *See* Text accompanying note 94 *supra*.
144. *See* text accompanying note 71 *supra*.
145. Western & S. Life Ins. Co. v. State Bd. of Equalization, 101 S. Ct. at 2082.

ATTORNEY AND CLIENT - COURT-APPOINTED ATTORNEYS ARE NOW ENTITLED TO FULL COMPENSATION IN REPRESENTING INDIGENT DEFENDANTS UNDER IOWA CODE SECTION 815.7, WHICH REQUIRES REASONABLE COMPENSATION EQUIVALENT TO THE ORDINARY AND CUSTOMARY CHARGES FOR LIKE SERVICE TO NONINDIGENT CLIENTS IN THE COMMUNITY. - *Hulse v. Wifvat* (Iowa 1981)

Plaintiff Gregory A. Hulse, an attorney, was appointed by an Iowa district court to represent Ralph William Kuecker, who had been charged with first degree murder of his wife.[1] The trial lasted for approximately thirteen days and ended in a mistrial due to the jurors disagreement on a verdict.[2] Subsequently, Kuecker pled guilty to involuntary manslaughter after plea negotiations.[3]

In his application for attorney's fees, the plaintiff submitted an itemized bill requesting compensation for 494.9 hours of his own time spent on the case plus 293.6 hours expended by others on the case.[4] The district court determined that under Iowa Code section 815.7,[5] which fixes the standard for compensation for court-appointed attorneys of criminal defendants,[6] the compensable fee was equivalent to that amount customarily charged for the services of indigent defendants.[7] The court concluded that $25.00 per hour was reasonable compensation for plaintiff's preparation time.[8]

In petitioning the Iowa Supreme Court for a writ of certiorari for review of the district court's method for awarding compensation,[9] the plaintiff complained that the court had misconstrued the compensation standard under section 815.7.[10] The Iowa Supreme Court granted certiorari and *held* reversed and remanded. A court-appointed attorney is entitled to full compen-

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1. Hulse v. Wifvat, 306 N.W.2d 707, 709 (Iowa 1981).

2. *Id.*

3. *Id.*

4. *Id.* Plaintiff had requested compensation for 58.6 hours expended by his law partner, 221 hours expended by an associate, and 14 hours expended by a law clerk. *Id.*

5. *Id.* Under this section, a court-appointed attorney "shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community." IOWA CODE § 815.7 (1981).

6. Hulse v. Wifvat, 306 N.W.2d at 708.

7. *Id.* at 709.

8. *Id.* The district court reduced the amount awarded to plaintiff from the current rate within the judicial district based on the plaintiff's lack of experience in defending persons charged with murder. State v. Kuecker, No. 6943 (D. Dallas Co., filed Jan. 29, 1980). The court also limited the amount of compensable time to 250 hours and disallowed any compensation for plaintiff's law associate, partner, and law clerk. *Id.*

9. Hulse v. Wifvat, 306 N.W.2d at 708.

10. *Id.* at 709. Plaintiff argued that the "ordinary and customary charges for like services" should be based on services to nonindigent clients." Plaintiff's Brief and Argument at 15, Hulse v. Wifvat, 306 N.W.2d 707 (Iowa 1981).

sation based on fees charged to nonindigent clients in similar litigation for the attorney's reasonably necessary services. *Hulse v. Wifvat*, 306 N.W.2d 707 (Iowa 1981).

The *Hulse* case was one of first impression for the Iowa Supreme Court concerning awardable compensation to a court-appointed attorney under the standard set by Iowa Code section 815.7.[11] Under this section, a court-appointed attorney "shall be entitled to a *reasonable compensation* which shall be the ordinary and customary charges for like services in the community" as determined by the presiding district court judge.[12] Prior to the 1978 enactment of section 815.7, the governing statute was section 775.5,[13] which entitled a court-appointed attorney to "reasonable compensation to be decided by the court."[14]

In determining reasonable attorneys' fees under the new statute, the court identified two elements which must be ascertained.[15] First, the services performed by the attorney must be reasonably necessary; and second, the value of the services must be reasonable.[16] The requirement that the attorney's services are reasonably necessary is used in determining what amount of the attorney's time is compensable.[17] The extent to which services are reasonably necessary and therefore compensable rests within the independent judgment of the district court[18] which "must put itself in the position of a reasonable attorney at the time the services were undertaken."[19] A trial court must do this by recognizing the "high standard of diligence and preparation which is demanded of counsel in criminal cases and" by considering "all of the relevant facts and circumstances surrounding that case."[20] The court found that the district court had properly applied the standard for determining the amount of plaintiff's services which were reasonably necessary.[21] The court concluded that the enactment of section 815.7 did not effect Iowa's requirement that the attorney's billable hours be reasonable in

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11. Iowa Code § 815.7 (1981).
12. *Id.* (emphasis added).
13. Iowa Code § 775.5 (1977) (repealed 1976 Iowa Acts, ch. 1245(4), § 526).
14. Iowa Code § 775.5 (1981).
15. Hulse v. Wifvat, 306 N.W.2d at 709.
16. *Id.*
17. *Id.* at 709-10. The court noted a Wisconsin case, *State v. Kenney*, 24 Wis. 2d 172, 128 N.W.2d 450 (1964), which stated: "[e]very attorney knows there is no limit to how much preparation one can give a law suit, but defense counsel must be practical and use good judgment. In such matters he proceeds at his own peril." *Id.* at 179-80, 128 N.W.2d at 454.
18. Hulse v. Wifvat, 306 N.W.2d at 710.
19. *Id.*
20. *Id.*
21. *Id.* The supreme court noted that the district court, in disallowing some of the time sought for compensation, had "disagreed with counsel concerning the necessity of certain investigative activities and believed that some portion of the time was devoted to plaintiff's self-education." *Id.*

number.[22]

The real conflict and the controversial analysis in this case concerned the court's determination of how the statute dealt with the second element of the valuation of an attorney's services. In its finding that a significant change had been made by the enactment of section 815.7,[23] the court proceeded to abandon the traditional policy, previously adhered to by the Iowa Supreme Court[24]—that of financial sacrifice by attorneys who are appointed to represent indigents accused of crimes.[25] This abandonment, accompanied by the court's misinterpretation of its own precedent regarding the difficulty of attaining uniformity in court-appointment fees,[26] and also its insufficient analysis of another jurisdiction's interpretation of a nearly identical statute,[27] are ingredients which made the *Hulse* opinion susceptible to critical analysis.

The court began its analysis of section 815.7 by examining the legislative history and court interpretation of prior Iowa statutes concerning the rate of compensation for court-appointed attorneys.[28] Prior to 1959, court-appointed attorneys were compensated by fees which were established by statute.[29] Amended in 1959, section 775.5 gave the district court authority to allow additional fees if deemed to be necessary in the interests of justice.[30] In 1965, the Iowa legisature eliminated statutory fees and placed the deter-

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22. *Id.* The court stated that the difference between sections 775.5 and 815.7 related to the valuation of services, and not to the necessity of services performed by court-appointed counsel. 306 N.W.2d at 710. The court affirmed the district court's decision to disallow compensation for plaintiff's law partner, associate and law clerk. *Id.* at 713.

23. *Id.* at 711. "The effect of this change is to make reasonable compensation full compensation. No discount is now required based on an attorney's duty to represent the poor." *Id.*

24. *See* Soldat v. Iowa Dist. Ct., 283 N.W.2d 497 (Iowa 1979). Attorneys are not entitled to compensation on the same basis as they may charge privately-retained clients. *Id.* at 499. *See also* Woodbury County v. Anderson, 164 N.W.2d 129 (Iowa 1969). The purpose of section 775.5 is not to provide full compensation nor to allow payment of fees as would be charged to nonindigent clients. *Id.* at 132.

25. *See, e.g.*, Soldat v. Iowa Dist. Ct., 283 N.W.2d at 499; Woodbury County v. Anderson, 164 N.W.2d at 132.

26. *See, e.g.*, Soldat v. Iowa Dist. Ct., 283 N.W.2d at 499. The broad discretion of courts in fixing attorneys' fees may create a "risk of inequality in the compensation of different lawyers who provide essentially the same services." 283 N.W.2d at 499 (quoting the ABA *Standard Relating to Providing Defense Services*, commentary to § 2.4(a) at 31 (1967)). *See also* Parrish v. Denato, 262 N.W.2d 281 (Iowa 1978). "[T]here should be some uniformity through-out the state of the amount of compensation paid at public expense to attorneys of like ability for services performed under the same or similar circumstances." *Id.* at 287.

27. *See* State v. Sidney, 66 Wis. 2d 602, 225 N.W.2d 438 (1975). (discussing WIS. STAT. § 967.06 (1977)). *See also* Conway v. Sauk County, 19 Wis. 2d 599, 120 N.W.2d 671 (1963).

28. Hulse v. Wifvat, 306 N.W.2d at 710-11.

29. *Id.* at 710. Court-appointed attorneys were paid $20.00 per day for trial time in defending persons charged with crimes punishable by life imprisonment, and $10.00 per day for trial time in defending individuals charged with any other felony offenses. IOWA CODE § 775.5 (1958).

30. 1959 Iowa Acts, ch. 376, § 1(2) (codified in IOWA CODE § 775.5 (1962)).

mination of reasonable compensation entirely within the discretion of the court.[31] The standard used was one of reasonable compensation; no statutory reference to "like services in the community" occurred until the enactment of section 815.7 in 1978.[32]

The rate of compensation for court-appointed attorneys under section 775.5 was first discussed in *Woodbury County v. Anderson*,[33] where the court determined that the statute was not intended to provide full compensation nor to represent payment of fees charged to nonindigent clients.[34] The *Anderson* court viewed the standard of reasonable compensation as relieving court-appointed attorneys of some of the financial burden while also insuring that indigents in criminal cases were represented.[35] In an attempt to extricate itself from this policy statement, the majority in *Hulse* rationalized that the *Anderson* statements were not based on the statute's language or legislative history, but rather on the court's prior belief that attorneys must make financial sacrifices in representing the poor.[36] By this reasoning, the *Hulse* court proceeded to set up the means by which it could exclude the traditional policy of financial sacrifice from the legislative intent and language of section 815.7.

In the next case to be decided under section 775.5, the court in *Furey v. Crawford County*[37] introduced a method by which the review of court-appointed attorneys' fees might be simplified.[38] The court suggested that the attorney attach an affidavit "itemizing [the] time spent and stating [the] facts relevant to the difficulty and importance of the issues involved in the case, the responsibility assumed, his experience and ability, and any other factors important in determining reasonable compensation."[39] The court later explained in *Hulse* that use of these factors in determining an attorney's reasonable compensation was designed to avoid inequality and inconsistency in court-appointment allowances.[40]

The *Hulse* court then discussed and heavily relied on another section 775.5 case, *Parrish v. Denato*.[41] In *Parrish*, the court increased the number of factors presented in *Furey*[42] which were to be used by a district court in

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31. 1965 Iowa Acts, ch. 449, § 1 (codified in Iowa Code 775.5 (1966) (repealed 1976 Iowa Acts, ch. 1245(4), § 526)). Under this section, a court-appointed attorney "shall be entitled to a reasonable compensation to be decided in each case by the court." IOWA CODE § 775.5 (1966).
32. 1976 Iowa Acts, ch. 1245(2), § 1507 (codified in IOWA CODE § 815.7 (1979)).
33. 164 N.W.2d 129 (Iowa 1969).
34. *Id.* at 132.
35. *Id.*
36. Hulse v. Wifvat, 306 N.W.2d at 711.
37. 208 N.W.2d 15 (Iowa 1973).
38. *Id.* at 17.
39. *Id.* at 18.
40. 306 N.W.2d at 712.
41. *Id.* at 711 (citing Parrish v. Denato, 262 N.W.2d 281 (Iowa 1978)).
42. 208 N.W.2d at 18. *See* note 39 and accompanying text *supra*.

calculating an award for attorneys' fees.[43] These factors included " 'the time necessarily spent, the nature and extent of the service, . . . [. . . the possible punishment involved], the difficulty of handling and importance of issues, responsibility assumed and the results obtained, as well as the standing and experience of the attorney. . . .' "[44] In finding that the plaintiff should have been allowed to put on proof of what fees were awarded court-appointed attorneys in similar litigation,[45] the *Parrish* court stated that an attorney who demonstrated general knowledge of the customary and reasonable charges in the area for like services was qualified to give an opinion of the value of those services.[46] In this manner, the court added as a factor the customary charges for similar services.[47]

The *Hulse* majority stated that based upon the application of the factors listed in *Furey* and *Parrish*, consistency had been achieved in the award of reasonable attorneys' fees for court-appointed counsel.[48] Therefore, the court reasoned that because consistency and uniformity were already the state of the law,[49] an interpretation that section 815.7 was intended to provide uniformity in court appointment fees was superfluous[50] and would not result in a change in the law.[51] Thus, section 815.7 was was enacted for some other purpose than to achieve uniformity.[52]

The emphasis *Hulse* placed on the idea that uniformity and consistency were already the state of the law prior to the enactment of section 815.7 appears to be exaggerated. A closer examination of the *Parrish* decision suggests that the *Parrish* court was not entirely satisfied that a reliance on its list of factors would necessarily result in uniformity in fee allowances. At the conclusion of the *Parrish* decision, the court stated that there should be some uniformity in the amount of compensation paid to court-appointed attorneys of like ability for services performed under similar circumstances,[53] and suggested that "[t]rial courts might well be advised to consider methods employed in fixing fees for other professional [legal] services rendered at public expense."[54]

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43. Parrish v. Denato, 262 N.W.2d at 285.

44. *Id.* (quoting Gabel v. Gabel, 254 Iowa 251, ___, 117 N.W.2d 501, 503 (1962)) (brackets original).

45. 262 N.W.2d at 285. The court stated that even though the trial court was an expert on attorney's fees, it could not exclude "all relevant evidence on the reasonableness of the compensation it has set." *Id.*

46. *Id.* at 286.

47. *Id.*

48. Hulse v. Wifvat, 306 N.W.2d at 712.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 713. The purpose of the change in the statute was to establish a valuation standard requiring full compensation. *Id.*

53. 262 N.W.2d at 287.

54. *Id.*

The Iowa court, however, declined to follow this suggestion in *Soldat v. Iowa District Court*,[55] which came after the *Parrish* decision. The plaintiff in *Soldat* had polled the entire judicial district for opinions from attorneys concerning the customary charges in the community.[56] Though this method of obtaining evidence was upheld by the court, it noted that such evidence is not binding upon its determination if the fee award was reasonable.[57] According to the *Soldat* court, the test from *Parrish* for allowing the testimony of other attorneys was to seek opinions based upon their general knowledge of customary charges for similar services, rather than to seek their opinions of their own individual charges.[58]

The *Hulse* majority placed significance on the fact that in *Parrish*, the Iowa court had recognized the customary charges for similar services as being an included factor in determining an attorney's compensation.[59] However, the method by which this factor was analyzed in the *Soldat* opinion suggests that the practical utility of determining the customary charges for similar services in the community under section 815.7 may present difficulties to a district court attempting to achieve uniformity and consistency in its fee awards. The *Hulse* majority did not address the inconsistent treatment of the factor of customary charges in the *Parrish* and *Soldat* opinions; the lack of any guidance by the *Hulse* court as to how this factor is to be applied under the new interpretation of section 815.7 may undermine the majority's new position of full compensation for court-appointed attorneys.

The *Hulse* dissent addressed the issue of the practical difficulties presented by the majority's standard of full compensation based on the ordinary and customary charges for similar services in the community.[60] The majority of criminal defendants are indigent and are, therefore, eligible for legal services provided at public expense.[61] Given that few criminal defendants are able to afford private counsel, the reliance upon the customary charges by privately-retained counsel does not provide a useful yardstick for achieving consistent and uniform awards of court-appointment fees.[62]

The *Hulse* majority concluded its discussion of the legislative history and court interpretation of prior statutes by stating that the change rendered by section 815.7 was consistent with the *Furey* and *Parrish* factors affecting reasonable compensation.[63] The court stated that the "legislature intended that reasonable compensation for court-appointed attorneys be set

55. 283 N.W.2d 497, 499 (Iowa 1979).
56. Soldat v. Iowa Dist. Ct., 283 N.W.2d at 498.
57. *Id.* at 499.
58. *Id.* at 499-500. The *Soldat* court reasoned that evidence of an attorney's individual charges did not provide a "sound basis for determining a reasonable fee." *Id.* at 499.
59. Hulse v. Wifvat, 306 N.W.2d at 711 (citing Parrish v. Denato, 262 N.W.2d at 285).
60. 306 N.W.2d at 715 (LeGrand, J., dissenting opinion).
61. *Id.*
62. *Id.*
63. *Id.* at 711.

under the criteria which govern reasonable compensation for other litigation services."[64] These unspecified litigation services were interpreted as being services rendered to nonindigent clients;[65] no longer are court-appointed attorneys required to take a discounted fee when representing indigents.[66]

This change in policy concerning awardable fees for court-appointed attorneys was attacked by the dissent as a casting aside of a long, historical tradition of an attorney's obligation to assist the courts in the administration of justice by representing the poor at personal financial sacrifice.[67] In finding no legislative intent to make such a change, the dissent stated that "neither the language of the statute nor the majority's rationale vindicates the result reached."[68]

The difference between the majority and dissent concerning the interpretation of the language of the statute centered on the definition of "ordinary and customary *charges* for *like* services in the community" within section 815.7.[69] The majority focused its attention on the meaning of "charges," reasoning that because court-appointment fees traditionally were deemed "allowances" which were set by the court and not "charged" by counsel, it was plain that the language in section 815.7 referred to "fees charged to nonindigent clients in similar litigation."[70] The dissent, however, argued that the proper analysis of the statute should rest on the interpretation of "like services"[71] which were meant to refer to those services "rendered to indigent defendants pursuant to court-appointments."[72] The purpose of the statute, under this construction, was to make fees uniform and fair to court-appointed attorneys providing such services.[73]

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64. *Id.* Here the court was referring to the criteria listed in the Iowa Code of Professional Responsibility, DR 2-106(B), which are to be used as guides in determining the reasonableness of a fee. Among these criteria are:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional responsibility with the client.

(7) The experience, reputation and ability of the lawyer or lawyers performing the services.

IOWA CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS (1981).

65. Hulse v. Wifvat, 306 N.W.2d at 711.

66. *Id.*

67. *Id.* at 714 (LeGrand, J., dissenting opinion).

68. *Id.* at 714-15.

69. *See* IOWA CODE § 815.7 (1981) (emphasis added).

70. Hulse v. Wifvat, 306 N.W.2d at 712.

71. *Id.* at 715 (LeGrand, J., dissenting opinion).

72. *Id.*

73. *Id.* The dissent stated that "section 815.7 is simply a clear-cut and simple answer to a

The difficulty in ascertaining the meaning of "charges" and "like services" was previously discussed in Wisconsin by a series of state supreme court cases.[74] These cases interpreted a Wisconsin statute which provided that compensation for court-appointed attorneys would be "such as is *customarily charged* by attorneys of the state for *comparable services.*"[75] The Wisconsin Supreme Court determined that the amount of compensation should be two-thirds the rate charged to nonindigent clients,[76] and that this discount was based on the "fact of certainty of payment from the public treasury."[77] A court-appointed attorney thus relies upon compensation coming out of county funds for such budgeted services. The decision to discount the amount of compensation for court-appointed attorneys represented the attempt of the Wisconsin court to decrease the financial burden on attorneys, to establish guidelines in awarding fees, and to recognize the traditional and professional obligation of attorneys to represent the poor for less than full compensation.[78]

The *Hulse* majority briefly mentioned the Wisconsin opinions,[79] but considered that the predetermined percentage discount placed too much emphasis on the importance of certainty of payment.[80] The *Hulse* court felt that certainty of payment should be a consideration, but that it was only one of the several factors which should be used in determining the valuation of services.[81] The majority determined that "true uniformity" in compensation could be achieved only when all of the variables affecting reasonableness were considered, rather than by rigidly adhering to a fixed rate of compensation.[82]

Certainty of payment was considered by the dissent as a critical factor

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problem we recognized in *Soldat, Parrish,* and *Furey:* The desirability of making fees uniform and fair to all those rendering services under court-appointment." *Id.*

74. *See* State v. Sidney, 66 Wis. 2d 602, _, 225 N.W.2d 438, 442 (1975) (statutory language calling for compensation based upon what is customarily charged by attorneys for comparable service requires compensation which is measured by two-thirds the prevailing rate); Schwartz v. Rock County, 24 Wis. 2d 172, _, 128 N.W.2d 450, 455 (1964) (statute does not require application of full minimum State Bar rates); Conway v. Sauk County, 19 Wis. 2d 599, _, 120 N.W. 2d 671, 673 (1963) (recommendation to the court by a county Bar Association that court-appointed counsel submit bills on the basis of two-thirds of normal fees).

75. *See* note 74 *supra.* WIS. STAT. § 967.06 (1976) (emphasis added). Section 967.06 was repealed in 1977 when a state-wide public defender system was enacted. WIS. STAT. ANN. § 977.05 (West 1977).

76. State v. Sidney, 66 Wis. 2d at _, 225 N.W.2d at 442; *see also* Schwartz v. Rock County, 24 Wis. 2d at _, 128 N.W.2d at 455; Conway v. Sauk County, 19 Wis. 2d at _, 120 N.W.2d at 675.

77. State v. Sidney, 66 Wis. 2d at _, 225 N.W.2d at 442.

78. *Id.* at _, 225 N.W.2d at 442.

79. Hulse v. Wifvat, 306 N.W.2d at 712.

80. *Id.*

81. *Id.*

82. *Id.*

in determining court-appointment fees.[83] Recognizing that there are few defendants who are able to pay any fee, it was stated that "payment by county represents the only hope of payment."[84] Therefore, the knowledge that an attorney was definitely going to be paid for his or her services rendered under court-appointment, even at a rate less than full compensation, would represent an acceptable trade-off in the preservation of the policy of requiring personal financial sacrifice in the legal representation of the poor.

In finding that a number of factors besides the certainty of payment must be used in determining the reasonable compensation for court-appointed attorneys, the majority in *Hulse* established the need for a case-by-case analysis when making an award for court-appointment services.[85] The court stressed that the only difference from its holding in *Parrish* was that now compensation would not be reduced because of an attorney's duty to make financial sacrifices in representing indigents.[86]

The *Hulse* majority suggested that the legislature may have changed the statute because of the recognition of certain realities in the criminal justice system,[87] such as the demands of constitutional and statutory law, questions of the effectiveness of counsel, the small number of attorneys who are willing and qualified to accept court-appointment, and the dramatic increase in volume of criminal cases.[88] The court also recognized, however, that the economic realities of inflation and increasing court dockets were already straining county budgets, and that this change in the law would increase the tension at the local level.[89] Despite its recognition of these grim prospects facing the courts and the economy, the majority held fast to its interpretation of the statute, and considered these economic realities to be outweighed by the necessity of providing full compensation for court-appointed attorneys.[90]

By perceiving the prior state of the law to be that of uniformity in court-appointment fees based on the application of the factors in *Furey* and *Parrish*, the court appears to have made an assumption that is unsupported by the actual status of the Iowa court-appointment system. In a recent report prepared by the Iowa Crime Commission on the administration of the court-appointment system,[91] the findings indicated that on a practical level the state of the law prior to *Hulse* was producing inconsistent results and

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83. *Id.* at 716.

84. *Id.*

85. *Id.* at 712. The court stated that all relevant factors must be weighed in each case to determine reasonable compensation. *Id.*

86. *Id.*

87. *Id.* at 714.

88. *Id.* at 713-14.

89. *Id.* at 713.

90. *Id.*

91. Iowa Crime Commission, Indigent Defense in Iowa (written by Robert A. Lowe, 1980).

difficult management problems.[92] Even by diligently applying the factors in *Furey* and *Parrish*, a district court's achievement of uniformity in its fee awards could well be stymied by local budget controls. Assuming that the legislature was aware of the problems in the court-appointment system, or at least in the budgeting of public services in general, it is difficult to perceive a legislative intent to require full compensation under section 815.7. By recognizing our present economic difficulties, the legislative aim should be to bring uniformity to the fees provided to court-appointed counsel rather than to add a new component of full compensation for such attorneys which will further stretch the capabilities of county treasuries.

In determining that reasonable compensation now requires full compensation, the *Hulse* majority may have been attempting to preserve the traditional participation of the private bar in the criminal justice system.[93] It is evident, however, that this policy of participation by the private bar has run head-long into economic realities facing court appointed attorneys.

On a practical level, it appears that court-appointed attorneys have not been totally relieved of the financial burden in representing indigents. Although the amount of hourly compensation will increase, the district courts will still exercise control over the amount of services which are deemed necessary and therefore compensable. To this end, the majority in *Hulse* exhorted the courts to guard against expansion of services based on assurance of payment from the public treasury.[94] The practice of fee bill reduction has therefore not been eliminated, and could be exacerbated to the extent that the increase in compensation must still be compromised with local budgets.

In whatever way this decision is interpreted, either as a curse to county budgets and district courts or a boon to court-appointed attorneys, the requirement of full compensation for court-appointed attorneys has set a precedent which warrants close scrutiny. The decision has shaken the traditional foundation of court-appointed attorneys in the criminal justice system, and doubt remains as to whether compensating counsel in amounts equal to those in private practice will increase the number and effectiveness of court-appointed attorneys involved in the defense of indigents in Iowa.

Jeanne Johnson

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92. *Id.* at 102. Fees for court-appointments fell within the range of $30.00 to $40.00 per hour, and in some jurisdictions almost all of the fee bills submitted were reduced while in other jurisdictions fee bills were reduced only in major and very expensive cases. *Id.*

93. 306 N.W.2d at 713-14. In listing the realities of the criminal justice system which may have led the legislature to change the statute, (see notes 87-88 and accompanying text *supra*), the court stated that "although we encourage more lawyers to accept this burden [of court-appointments], the nature and extent of the burden make it unlikely enough of them will be able to do so." *Id.*

94. *Id.* at 713.

BANKRUPTCY—APPLICATION OF THE LIEN AVOIDANCE PROVISION OF THE BANKRUPTCY REFORM ACT TO NONPOSSESSORY, NONPURCHASE-MONEY SECURITY INTERESTS CREATED PRIOR TO THE ENACTMENT OF THE ACT CONSTITUTES A TAKING IN VIOLATION OF THE FIFTH AMENDMENT—*Hammer v. Beneficial Finance Co.* (Bankr. N.D. Iowa 1981).*

On June 25, 1980, Richard and Florence Hammer filed a voluntary petition in bankruptcy.[1] Subsequently, the Hammers, as debtors,[2] filed a complaint to avoid the fixing of a lien[3] on certain household property in which Beneficial Finance Company (Beneficial) held a nonpossessory, nonpurchase-money security interest.[4] Beneficial had extended credit[5] to the Hammers on or about June 21, 1978, and had properly perfected a security interest in the Hammers' household property according to the terms of a security agreement entered into by the parties.[6] The Hammers alleged in their complaint that Beneficial's lien impaired an exemption[7] to which they were entitled under section 522(b) of the Bankruptcy Reform Act.[8]

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* All cites to Bankruptcy Court will be to West's B.R. A cross-reference table can be found at the end of the case note for other services reporting the cases cited.

1. Hammer v. Beneficial Fin. Co., 9 B.R. 343, 345 (N.D. Iowa 1981). *See* 11 U.S.C. § 301 (Supp. III 1979) (voluntary petition to liquidate).

2. A "debtor" is an entity which has filed for backruptcy relief. 11 U.S.C. § 101(12) (Supp. III 1979). The Code does not use the term "bankrupt."

3. 11 U.S.C. § 522(f)(2) (Supp. III 1979). A "lien" is a "charge against or interest in property to secure payment of a debt or performance of an obligation." *Id.* § 101(28).

4. Beneficial had a security interest in: one bookcase, one chair, two couches, two design clocks, one GE tape player, a five piece table and chair, six kitchen chairs, one Frigidaire refrigerator, one Singer sewing machine, one Frigidaire range, one Sylvania television, one Eureka vacuum, one Frigidaire washing machine, one Frigidaire dryer and a three piece bedroom set. Hammer v. Beneficial Fin. Co., 9 B.R. at 344-45. "Security interest" is defined as a lien created by agreement. 11 U.S.C. § 101(37) (Supp. III 1979). A "purchase-money security interest" is an interest taken by the seller of the collateral to ensure payment. IOWA CODE § 554.9107 (1981). Note that section 522(f)(2) applies to interests which are nonpossessory, as well as nonpurchase-money.

5. "Credit" means the right granted by a creditor to a person "to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor." IOWA CODE § 537.1301(15) (1981).

6. *See* IOWA CODE § 554.1201(37) (1981).

7. "An exemption is a right given by law to a debtor to retain portions of his property free from the claims of creditors. More specifically, the exemption relieves designated property from attachment or execution by creditors." Hertz, *Bankruptcy Code Exemptions: Notes on the Effect of State Law*, 54 AM. BANKR. L.J. 339, 339 (1980).

8. Hammer v. Beneficial Fin. Co., 9 B.R. at 345. Under applicable state and federal exemption laws a debtor may retain unencumbered title to certain property notwithstanding the trustee's rights with respect to the bankrupt estate. 11 U.S.C. § 522(b) (Supp. III 1979). When the Hammers filed their petition in June of 1980, local law allowed debtors to elect between local and federal exemptions. *See* IOWA CODE § 627 (1979). Presently, however, Iowa's exemp-