



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 12, 2011

Joint Committee on Finance

Paper #121

### **Civil Legal Services for the Indigent (DOA -- Justice Information System Surcharge)**

[LFB 2011-13 Budget Summary: Page 36, #1 and Page 38, #2]

#### **CURRENT LAW**

*Funding for Civil Legal Services for the Indigent.* Since the mid-1970s, the federal government has distributed grant funding for civil legal services through its Legal Services Corporation (LSC). In federal fiscal year 2010, Wisconsin received \$4,987,400 in federal basic field grant funding from the LSC for civil legal services.

Funding for civil legal services is also provided through the Wisconsin Trust Account Foundation, Inc. (WisTAF). Funding is provided through: (a) justice information system surcharge revenue that is allocated by the Department of Administration (DOA) to WisTAF; (b) an annual \$50 assessment on all active attorneys of the State Bar of Wisconsin; (c) interest on lawyers' trust accounts; and (d) the Wisconsin Equal Justice Fund, a nonprofit agency formed by attorneys to increase funding for civil legal services programs. For calendar year 2010, WisTAF reported total income of \$4,249,100, of which \$3,845,700 was provided as grants. Of the total grant funding provided: (a) \$2,546,100 was provided by the state from justice information system surcharge revenue allocated by DOA (2010-11 funding); (b) \$881,900 was funded from the annual \$50 assessment on all active attorneys; (c) \$273,100 was funded from interest on lawyers' trust accounts; and (d) \$144,600 was provided from the Wisconsin Equal Justice Fund.

The Wisconsin Trust Account Foundation, Inc. was created in 1986 by the Wisconsin Supreme Court to receive funding from the interest on lawyers' trust accounts and to provide grants to agencies providing civil legal services to indigent persons.

*Justice Information System Surcharge.* The \$21.50 justice information system surcharge is generally assessed with a court fee for the commencement or filing of certain court proceedings, including civil, small claims, forfeiture, wage earner, or garnishment action, an appeal from municipal court, third party complaint in a civil action, or for filing a counterclaim or cross complaint in a small claims action. For each assessed \$21.50 surcharge, revenue is

allocated as follows: (a) \$7.50 to DOA for justice information systems (otherwise known as the district attorney information technology (DA IT) program); (b) \$6 to the court system for the circuit court automation program (CCAP); (c) \$4 for grants for indigent civil legal services; (d) \$1.50 to DOA's Office of Justice Assistance (OJA) for the treatment, alternatives, and diversion (TAD) grant program; (e) \$1.50 to OJA to fund the gathering and analyzing of statistics on the justice system, including racial disparity, uniform crime reporting, and incident-based reporting (this funding may also be transferred to OJA appropriations for traffic stop data collection implementation); and (f) \$1 to the general fund.

## **GOVERNOR**

Delete the PR annual indigent civil legal services appropriation and its associated base expenditure authority of \$2,546,100 PR annually. [Under current law, this appropriation is allocated \$4 from every assessed justice information system surcharge of \$21.50.] In addition, delete current law statutory language which governs the administration of the civil legal services grant program.

## **DISCUSSION POINTS**

1. In 2007, the State Bar of Wisconsin released its study, *Bridging the Justice Gap: Wisconsin's Unmet Legal Needs*. This study found that more than 500,000 Wisconsin residents whose income falls at or below 200% of the federal poverty guidelines face at least one significant legal issue in a year without legal assistance. According to the report, the most common legal problem facing these individuals is the loss or reduction of public benefits. The second most common legal problem involves financial or consumer issues, such as unpaid medical bills.

2. In discussing the effects of increasing numbers of individuals and families going without legal representation, the report stated that,

"Three propositions stand to reason, and deserve further study: First, an unrepresented person who loses his or her benefits or his or her home in circumstances in which a lawyer could have helped avoid the loss, or at least mitigated it, likely will turn for emergency help to the government or to a community agency, the cost of which may equal or exceed the cost of supplying a lawyer in the first place. Legal Action of Wisconsin was able to document more than \$7 million in benefits that it obtained for its clients in 2005 in disputes involving housing, consumer law, family law, public benefits, and individual rights.

Second, business productivity suffers when an employee's legal problems, compounded by lack of representation, interfere with his or her attention and determination to perform the job.

Third, our state economy suffers the loss of federal dollars when persons eligible for federal or other benefits cannot secure them because they are unrepresented and unsuccessful in navigating the complexities of the benefits system. The dollars that flow into Wisconsin through these benefits programs support our state's hospitals, clinics, pharmacies, groceries, landlords, retailers, and other industries.

This third proposition is demonstrated by a successful Wisconsin program that provides legal services to the elderly and people with disabilities. The Department of Health and Family Services provides benefit specialists in almost all counties. These "ben specs" are trained and supervised by lawyers. They help clients navigate the complex rules and regulations of government benefit programs and help them secure benefits to which they are entitled by law. The department believes that for every dollar it spends on the program, Wisconsin citizens receive seven dollars in federal and state benefits, plus private insurance coverage."

3. The Legislature considered the findings of this study when it reviewed a recommendation in the 2007-09 budget bill to provide funding for civil legal services for the indigent. Under 2007 Wisconsin Act 20, the state provided \$1,000,000 GPR annually in grants for civil legal services beginning in 2008-09. Under 2009 Act 28, the funding source for grants for civil legal services was changed from the general fund to the justice information system surcharge. Under Act 28, funding for civil legal services was appropriated \$1,958,600 PR in 2009-10, and \$2,546,100 PR in 2010-11. The Department of Administration annually pays the grant funding to WisTAF. The Foundation is required to distribute the moneys received as grants to programs that provide civil legal services to indigent persons. Programs receiving this grant funding may utilize the grants funds to match other federal and private grants. The grants may only be used for the purposes for which the funding was provided. In its 2009 annual report, WisTAF indicated that, "Prior to July 1, 2008, Wisconsin was one of only six states in the U.S. that did not fund legal services to enable the state's low-income residents to access the civil court system."

4. On August 30, 2010, WisTAF submitted a report to DOA summarizing how the \$1,958,600 PR in justice information system surcharge grant funding in 2009-10 was utilized. By a unanimous vote of the Board of Directors of WisTAF, the Foundation absorbed the entire cost of administering the grant funding. All of the funding was passed through to agencies to provide civil legal services for the indigent. The Foundation reported that more than 8,400 individuals were served during this period with this funding. This only included individuals directly served and only cases that were closed during the period. The Foundation reported that attorneys representing these clients were able to recover \$22,240,700 in awards. Of these amounts recovered: (a) \$11,600,400 was recovered primarily from recoveries for predatory lending practices and wrongful denials of private health insurance benefits; (b) \$8,166,600 was associated with public assistance from such programs as Social Security, Medicaid, Medicare, and Food Share; and (c) \$1,176,900 was recovered primarily for child support or tenant security deposit recoveries. [For the remaining \$1,296,800 in client recoveries in 2009-10, sufficient information was not provided to assign the recovery to one of the above three categories.] In order to be financially eligible to receive representation with state funding a client had to be either: (a) one whose income was no higher than 125% of the poverty level established by the U.S. Department of Labor; or (b) a part of a group whose membership includes 50% or more eligible clients or whose primary purpose is assistance to low-income persons (for example Food Share enrollees).

5. The Governor recommends deleting the state's indigent civil legal services grant program and its base funding of \$2,546,100 PR annually. The administration indicates that this was done in order to permit the administration to prioritize criminal justice and public safety programs without increasing the justice information system surcharge. The administration also indicates that, "Civil legal services for the indigent also receive funding from interest on attorneys' trust accounts

and a public interest legal services fund, and attorneys in Wisconsin are encouraged to take pro bono cases each year." In addition, Legal Action of Wisconsin, Inc. and Wisconsin Judicare Inc. received almost \$5 million in federal funding in federal fiscal year 2010 to provide civil legal services. As a result, the Committee could consider adopting the Governor's recommendation to delete the state's indigent civil legal services grant program. [Alternative 1]

6. On the other hand, the 2007 State Bar study found that more than 500,000 Wisconsin residents whose income falls at or below 200% of the federal poverty guidelines face at least one significant legal issue in a year without legal assistance. In addition, in its August 30, 2010, report to DOA, the Wisconsin Trust Account Foundation, Inc., stated that, "All grantees report that since the summer of 2008 and the start of the current economic crisis, the number of requests for civil legal services has sky-rocketed, while funding for civil legal services has dramatically decreased. State funding is more important than ever to help Wisconsin residents get the civil legal help that they need to retain their homes, their jobs, their families and their right to access the state's justice system." Based on calendar year 2010 grant awards, if the state's indigent civil legal services grant program were deleted, available grant funding for WisTAF would decrease by more than 66%. As a result, the Committee could consider maintaining the grant program.

7. Given these concerns, the Committee could consider two different alternatives. First, \$2,546,100 GPR annually could be provided to restore the base funding for the program, but utilize GPR instead of justice information system surcharge revenue. [Alternative 2] Second, based on initial funding to the program in the 2007-09 biennium, the Committee could also consider providing \$1,000,000 GPR annually to continue the state's indigent civil legal services grant program. However, this second GPR funding alternative would reduce base funding for the program by more than 60%. [Alternative 3] These alternatives would require the creation of a GPR annual indigent civil legal services appropriation. These alternatives would also maintain current law statutory language governing the administration of the civil legal services grant program.

8. Finally, under the *Justice Information System Surcharge Overview Paper #120*, the Committee could select Alternative 2. [This alternative would delete the recommendation in the bill to alter the allocation mechanism for justice information system surcharge revenue, reduce the surcharge from \$21.50 to \$14.50, and would again limit the functions funded from the surcharge to justice information systems at DOA and the courts, and deposit \$1 from every assessed surcharge to the general fund. The Committee could select this alternative to primarily restrict the fund to supporting justice information systems.] Nonetheless, in conjunction with this alternative, the Committee could also elect to maintain current law and continue to fund the state's indigent civil legal services grant program with justice information system surcharge revenue. Under this alternative: (a) an additional \$4 from every assessed justice information system surcharge would be allocated to fund grants for civil legal services for the indigent; (b) the PR annual indigent civil legal services appropriation and its associated base expenditure authority of \$2,546,100 annually would be maintained; and (c) current law statutory language governing the administration of the civil legal services grant program would also be maintained. [Alternative 4]

## ALTERNATIVES

1. Approve the Governor's recommendation to delete the PR annual indigent civil legal services appropriation and its associated base expenditure authority of \$2,546,100 PR annually. In addition, delete current law statutory language which governs the administration of the civil legal services grant program.

2. Create a GPR annual indigent civil legal services appropriation and provide \$2,546,100 GPR annually to the appropriation. In addition, maintain current law statutory language governing the administration of the civil legal services grant program. [This alternative would maintain base funding for the program, but return the funding source to GPR.]

<b>ALT 2</b>	<b>Change to Bill Funding</b>
GPR	\$5,092,200

3. Create a GPR annual indigent civil legal services appropriation and provide \$1,000,000 GPR annually to the appropriation. In addition, maintain current law statutory language governing the administration of the civil legal services grant program. [This alternative would restore funding to the program based on amounts provided to the program in 2008-09, and would return the funding source of the program to GPR.]

<b>ALT 3</b>	<b>Change to Bill Funding</b>
GPR	\$2,000,000

4. Maintain current law. This alternative would retain the PR annual indigent civil legal services appropriation and its associated base expenditure authority of \$2,546,100 PR annually. Under this alternative, an additional \$4 from every assessed justice information system surcharge would be allocated to this appropriation to fund grants for indigent civil legal services. This alternative would increase surcharge revenue under the bill by an estimated \$2.8 million annually. Finally, this alternative would maintain current law statutory language governing the administration of the civil legal services grant program. [This alternative may only be selected in conjunction with Alternative 2 under the *Justice Information System Surcharge Overview Paper #120*.]

<b>ALT 4</b>	<b>Change to Bill</b>	
	Revenue	Funding
PR	\$5,600,000	\$5,092,200

Prepared by: Paul Onsager