



Supreme Court of Wisconsin

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January 19, 2016

Senator Mary Lazich, Co-Chair
Joint Legislative Council
219 South, State Capitol
Madison, WI 53702

Representative Joan Ballweg, Co-Chair
Joint Legislative Council
210 North, State Capitol
Madison, WI 53702

Dear Senator Lazich and Representative Ballweg:

We are writing respectfully to request the creation of a Legislative Council study committee on access to legal services in civil matters.

The Supreme Court recognizes that thousands of Wisconsinites are unable to afford legal services in civil cases. The Court believes that legal services are critical in many of these cases and that too often they are not provided. Judges are increasingly receiving requests for the appointment of counsel at county expense.

The Court is united in the view that we must awaken the concern and support of the Legislature if Wisconsin is ever to make real progress on this problem. A truly comprehensive Legislative Council study is the way to start.

The Court, of course, could simply ask the Legislature for additional tax dollars, but such a plea would not suffice. In these times, any case for public spending must be explained, carefully documented, and widely understood. Today there is no consensus on how to expand access to civil legal services because there is no consensus on the nature, magnitude, and seriousness of the problem. The Legislature is not likely to provide additional funding until policymakers—in all three branches of government—understand why this problem should be addressed. The Legislature is not likely to act until it is convinced that the judiciary is reasonably tapping multiple other sources. Legislative assistance may be needed, in any event, to provide tools besides tax dollars so that other options may be pursued.

We are asking the Legislative Council to initiate a comprehensive, no-holds-barred study of how to provide civil legal services to people who cannot afford them. This study should evaluate every aspect of the situation, explore every reasonable option for providing services, and identify true priorities as opposed to what might merely be desirable.

The following background should be helpful in considering this request.

Over the years, civil legal services to the indigent have been provided by such organizations as Legal Action of Wisconsin, Wisconsin Judicare, and the Legal Aid Society of Milwaukee. These organizations have been funded by federal grants, state appropriations, the interest on attorney trust accounts, and contributions from private foundations and individuals. Money in the latter three categories has been distributed to grantees by the Wisconsin Trust Account Foundation, Inc. (WISTAF), which was created by our court in 1986. Historically, pro bono services have been provided by individual attorneys, local bar associations, major law firms, and the state's two law schools. In recent years, the Wisconsin State Law Library has, in multiple ways, provided assistance to pro se litigants. The Court's website also features a self-help law center to assist people in representing themselves. Self-help law center: Representing yourself in court, Wisconsin Court System (Mar. 7, 2012) <http://wicourts.gov/services/public/selfhelp/selfrep.htm>.

The financial sources supporting civil legal services have proven wildly unstable. Pro bono contributions have proven inadequate. The demand for pro se assistance has skyrocketed.

In 2007 the State Bar of Wisconsin conducted an extensive study (Bridging the Justice Gap: Wisconsin's Unmet Legal Needs, March 2007). It found that more than 500,000 Wisconsin residents faced serious civil legal problems without the assistance of a lawyer or other legal professional. These unserved residents included the elderly, veterans, children, the disabled, low wage workers, and the unemployed.

The Supreme Court responded to the State Bar study in 2009 by imposing a \$50 annual assessment on attorneys and judges as additional revenue for WISTAF to support civil legal services. It also directed the creation of the Wisconsin Access to Justice Commission (WATJC), a nonprofit corporation substantially funded by the State Bar of Wisconsin to develop and encourage means to expand access to the civil justice system for unrepresented low income residents.

In 2013 WATJC issued a report (The State of Equal Justice in Wisconsin) after a series of statewide hearings, which substantiated the findings of the earlier State Bar study.

The Court has strongly supported legislative funding and is deeply appreciative of the \$500,000 annual appropriation approved in the 2015-2017 state budget.

Nonetheless, please understand that the Court is under constant pressure to create more funding and, if necessary, to do so unilaterally—without the Legislature—to promote and protect due process in certain civil cases. To illustrate:

- On October 4, 2011, the Court conducted a public hearing on rule petition 10-08, filed by John Ebbott, then-Executive Director of Legal Action of Wisconsin, Inc., and Thomas G. Cannon, then-Executive Director of Legal Aid Society of Milwaukee, Inc. The petition asked the Court to create a Supreme Court rule recognizing a right to counsel in civil cases. The public hearing attracted numerous speakers and written submissions. Virtually all who appeared on the petition favored its adoption. In the final order denying the petition, the Court observed that the "single point of opposition [in the written comments and at the hearing] focused on the costs of appointing counsel, not the need for or value of providing legal services for the indigent in civil cases." S.Ct. Order 10-08, 2012 WI 14 (Feb. 24, 2012). The Court was mindful that the WATJC was then developing a pilot project that would have compiled comprehensive cost data on the appointment of counsel in civil cases. Unfortunately, the pilot project was not implemented due to lack of funding.
- In September 2013, another rule petition was filed asking the Court to allocate funds in the Supreme Court budget to plan and implement a pilot project for indigents in one or more selected categories of civil cases involving basic human needs (sustenance, shelter, heat, medical care, safety, child custody and placement). The petitioners asked the Court to fund such a pilot project from the Court's sum sufficient appropriation to carry its functions into effect. See Wis. Stat. § 20.680(1). This rule petition is still pending. In public discussions, the Court has indicated that reluctance to grant the petition did not stem from any question about a need but because of the Court's inability to reliably assess how many appointments of counsel might be warranted and accurately evaluate resultant cost.
- In 2014, the Court approved rule petition 13-11 to increase the pro hac vice fee—the fee that out-of-state lawyers must pay to practice in Wisconsin on a temporary basis. The fee was raised from \$50 to \$250—with \$100 going to WISTAF and \$50 to WATJC.
- In 2015, WATJC filed a rule petition asking the Court to amend Wis. Stat. § 803.08 to designate that a portion of unclaimed class action awards be used to support legal services for low-income residents. See Rule Petition 15-06, In re Proposed Amendment to Wis. Stat. § 803.08 Allocating a Portion of Unclaimed Class Action Awards to Support the Provision of Legal Services to Low-Income and Indigent Persons (pending).
- Also in 2015, the State Bar filed a rule petition asking the Court to permit lawyers to obtain continuing legal education credit for pro bono services, noting that increasing pro bono participation is a strategic priority for the State Bar. See Rule Petition 15-05, In the Matter of the Petition to Amend Supreme Court Rule Chapter 31 and Chapter 10.03 (pending).

One objective of the proposed study committee would be to brainstorm other possible sources of assistance and help to plan the most effective means of delivering services.

The legal process frequently affects the most basic human concerns: protection from domestic violence, family law, custody and placement, guardianship, housing, and veterans' benefits. Self-representation is now prevalent in family law cases in Wisconsin. Most tenants receive little or no legal assistance when they face eviction. The same is true for many veterans, seniors, and abuse victims when they face a civil legal problem. There is a growing unmet need for basic estate planning legal clinics for first responders, seniors, and veterans. Staffed legal aid agencies are simply unable to meet more than a small fraction of the legal needs experienced by individuals who qualify for their services.

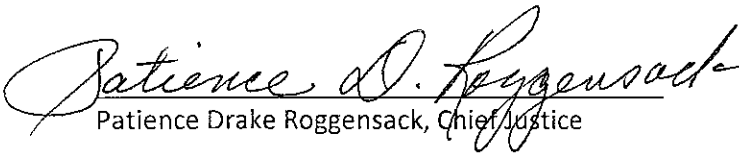
The record demonstrates that the Court is willing to do its share in addressing a social problem, but there is only so much that the judiciary can do on its own to generate revenue.

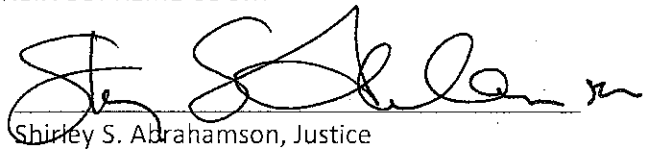
This letter represents our appeal to you to create a study committee to examine how we can better provide legal services to our citizens who need them but cannot afford them. We know you understand that ignoring the issue will not solve it or make it go away. As always, in Wisconsin we move forward when we face issues boldly, with purpose and vision. That is what we are asking the Legislative Council to do here.

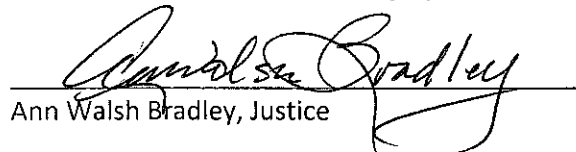
Thank you for your serious consideration.

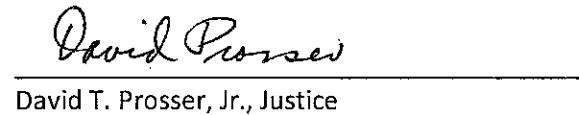
Respectfully,

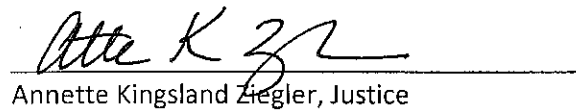
WISCONSIN SUPREME COURT

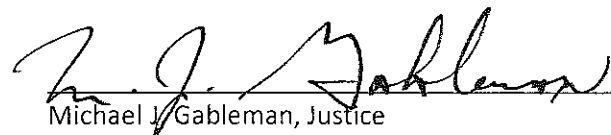

Patience Drake Roggensack, Chief Justice

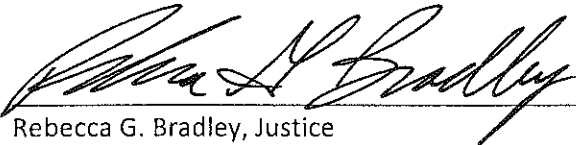

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