

**STATE OF WISCONSIN
SUPREME COURT**

In the matter of:

The petition of the State Bar of Wisconsin
proposing the creation of a
Wisconsin Access to Justice Commission

PETITION FOR CREATION OF ACCESS TO JUSTICE COMMISSION

To: The Honorable Justices of the Supreme Court

The State Bar of Wisconsin, acting pursuant to a resolution of its Board of Governors, petitions the Court for an order creating a new Wisconsin Access to Justice Commission. The reasons for this petition and a description of the proposed commission are described more fully below.

I. Confronting the Wisconsin Justice Gap

The State Bar of Wisconsin believes that equal justice for all is fundamental to our system of government in Wisconsin. Delivering on the promise of equal justice is a core element of the State Bar of Wisconsin's strategic plan which in turn reflects the reasons for which the State Bar was organized under SCR 10.02(2). The promise of equal justice under law is not realized for individuals and families who have no meaningful access to their justice system. In an increasingly rule-bound society, lack of access to legal advice or advocacy for basic needs can have catastrophic consequences that are far more costly than the provision of legal aid at the outset. The reality and the perception of a denial of equal justice has an adverse impact on these individuals, families, and society as a whole, and works to erode public trust and confidence in our system of justice.

A. The need is substantial

The number of low income Wisconsin residents facing serious civil legal problems without necessary legal assistance is large and growing. Those in need include the chronically unemployed, the homeless, the disabled and elderly people barely getting by on Social Security in addition to families and individuals who, every day, must sacrifice in order to obtain basic necessities. The legal needs encompass every aspect of a person's life, including housing, family, children's schooling, wills/estates, employment, consumer and public benefits.

The State Bar's Access to Justice Study Committee report, "Bridging the Gap: Wisconsin's Unmet Legal Needs," extensively documented the unmet legal needs of low-income residents in this state through the Wisconsin Civil Legal Needs Study that the committee commissioned.

The Report in its entirety is incorporated in this Petition. Some key findings from the legal needs survey were:

- Every year in Wisconsin more than 500,000 people confront an average of two serious civil legal problems.
- The need was highest among the poorest families; almost half (48%) of those in the lowest income group encounter an average of two serious civil legal problems every year.
- 64% of poor households with children and 63% of households with someone who is disabled encounter a legal need.
- 32% of rural households encounter a civil legal need.
- Nearly 66% of those who proceed without legal representation in court or at an administrative hearing face opposing parties who *are* represented.

B. The gap between needs and available services is vast

Recent studies across the country consistently have shown that legal service programs meet only 20-50% of the need. In Wisconsin, about 80% of households with a legal need go without legal assistance. The Access to Justice study found that among all households who reported a legal problem, only 12% said they had received help from a lawyer for all the problems they identified and only 27% received help from a lawyer for at least one of the issues. Legal service providers in Wisconsin report that for every eligible client they serve, they must turn away another client, simply for lack of funds. These findings are corroborated by the tide of unrepresented litigants that threatens to swamp our court system.

These figures may understate the actual size of the “justice gap” in Wisconsin. The Access to Justice survey results show that most of those who would be eligible did not know how to obtain legal assistance. Only 37% of the survey respondents were aware of the existence of free legal services for people who cannot afford a lawyer.

Wisconsin has made laudable efforts to meet these needs, but despite efforts such as the following, a vast gap persists:

- Wisconsin lawyers and clients pay interest on trust accounts to the Wisconsin Trust Account Fund, which distributes the funds to legal service providers.
- Providers also receive contributions from the Equal Justice Fund, to which lawyers and others make charitable contributions to address the need for lawyers in civil matters.
- Every Wisconsin lawyer contributes \$50.00 per year to the Public Interest Legal Services Fund by way of mandatory assessment.
- Wisconsin lawyers contribute an estimated 40,000 hours or more of *pro bono* legal services.
- The Department of Health and Family Services operates an exemplary program of “benefit specialists,” trained and supervised by lawyers, who help elderly clients and clients with disabilities navigate the complex rules and regulations of government benefit programs and help them secure benefits to which they are entitled by law.
- The Legislature recently enacted a measure sponsored by the Governor to provide approximately \$1 million in state funds to be distributed to providers who serve the legal needs of low income families.
- This Court and others in the state have launched self-help centers, expanded the range of assistance court clerks can render, simplified court forms and made them available on-line.

- The Court amended the Rules of Professional Conduct, raising and sharpening the Court's *pro bono* expectations of lawyers (SCR 20:6.1), and expanding opportunities for lawyers to serving low income families in legal clinics without harming the interests of other clients (SCR 20:6.5).

II. Sustained and coordinated attention is needed to close the justice gap

Policymakers and the public are less likely to believe that substantial, long term investments in civil legal aid to the poor are both necessary and wise without coordinated outreach and a statewide plan for action. A commission should be empowered to make significant headway on improving access to justice. It should be an advocate for the additional resources that will be needed and it should be a champion for a system of civil legal services delivery to the poor that is efficient, just and accessible to all.

A. Judicial leadership is vital

The judiciary is the most public face of the justice system and embodies the trust that the public places in the rule of law. Resolution 23 adopted by the Conference of Chief Justices at its Midyear Meeting on January 25, 2001, recognizes that judicial leadership on this important issue is vital to making progress on closing the gap between the promise and the reality of equal justice for all. The resolution concludes that judicial leadership is essential to ensuring equal access to the justice system and "encourages individual members in their respective states to establish partnerships with state and local bar organizations, legal service providers, and others to:

1. Remove impediments to access to the justice system, including physical, economic, psychological and language barriers; and
2. Develop viable and effective plans, to establish or increase public funding and support for civil legal services for individuals and families who have no meaningful access to the justice system; and
3. Expand the types of assistance available to self- represented litigants, including exploring the role of non-attorneys."¹

The State Bar of Wisconsin fully supports the statement of judicial leadership contained in Conference of Chief Justices Resolution 23. Only a collaborative effort between the bar, the Court and other stakeholders in the justice system will ensure that progress is made in increasing access to justice. A Wisconsin Access to Justice Commission dedicated to the mission of developing comprehensive plans for addressing the "justice gap" can be an important step towards achieving each of the three goals set forth at the end of the above resolution.

B. Access to justice commissions are a proven tool for improving the civil justice system

¹ Adopted as proposed by the Access to and Fairness in the Courts Committee of the Conference of Chief Justices in Baltimore, Maryland at the 24th Midyear Meeting on January 25, 2001.

The highest courts of 20 states plus the District of Columbia have ordered the creation of statewide equal justice planning bodies similar to the commission proposed by this petition. High courts in Alabama, Alaska, Arkansas, California, Colorado, District of Columbia, Georgia, Idaho, Massachusetts, Minnesota, Montana, Mississippi, Nevada, New Hampshire, New Mexico, New York, North Carolina, South Carolina, Texas, Utah and Washington have adopted such a structure.

The access to justice commission model has proven its value nationally in expanding, coordinating and promoting effective and economical civil legal services delivery for vulnerable people. Commissions like these have pushed for and accomplished expanded state funding of civil legal service programs. They have encouraged and accomplished greater contributions of time and money from lawyers, civic-minded corporations, foundations and other patrons of good government. They have coordinated efforts among the bench and the bar to raise awareness of the need for greater support for legal services to low income families and of innovative programs to meet those needs.

Some fear that such a body will become a tool of those who might seek to limit rather than expand the scope of services available to low income families. They cite the experience over the years with limitations imposed on legal service providers who receive funding from the federal Legal Services Corporation. However, the State Bar is not aware of any evidence that any one of the twenty state commissions upon whom this proposed commission is modeled have ever sought to limit rather than expand the services available to those who need them.

C. Wisconsin can and should meet a higher standard

The State Bar of Wisconsin supports the goal stated in the preface to the “Principles of a State System for the Delivery of Civil Legal Aid” adopted by the American Bar Association’s House of Delegates in August 2006:

A state’s system for the delivery of civil legal aid provides a full range of high quality, coordinated and uniformly available civil law-related services to the state’s low-income and other vulnerable populations who cannot afford counsel, in sufficient quantity to meet their civil legal needs.

These expectations are reflected in the updated “Standards for the Delivery of Civil Legal Aid” that were also adopted by the ABA House of Delegates in August 2006. We set forth the ABA 10 Principles here, because we believe that they should guide the Court’s consideration of this petition and the work of the Access to Justice Commission:

A state’s system for the delivery of civil legal aid achieves the goal if it:

1. Provides services to the low-income and vulnerable populations in the state.
2. Provides a full range of services in all forums.
3. Provides services of high quality in an effective and cost efficient manner.

4. Provides services in sufficient quantity to meet the need by maximizing and making the most effective use of financial, volunteer, and in-kind resources dedicated to those services from all likely sources.
5. Fully engages all entities and individuals involved in the provision of those services.
6. Makes services fully accessible and uniformly available throughout the state.
7. Treats clients and others who receive services with dignity and respect, actively engages clients and interacts effectively with them and engages them in planning and obtaining meaningful information about their legal needs to improve the system as a whole.
8. Engages and involves the judiciary and court personnel in reforming their rules, procedures and services to expand and facilitate access to the courts and to reduce, whenever possible, the cost of providing civil legal services.
9. Is supported by an organized bar and judiciary that is providing leadership and participating with legal aid providers, law schools, the executive and legislative branches of government, the private sector and other appropriate stakeholders in ongoing and coordinated efforts to support and facilitate access to justice for all.
10. Engages in statewide planning and oversight of the system for the delivery of civil legal aid to coordinate and support the delivery of services and to achieve the principles set forth above.

The ABA Principles envision a state delivery system that operates as a whole, rather than as the province of only courts, the bar, individual providers or other stakeholders. The establishment of a Wisconsin Access to Justice Commission would bring Wisconsin one step closer to achieving justice for all.

III. Creation And Organization Of The Commission

A. Mission

To achieve progress towards the objectives outlined in the ABA Principles, a Wisconsin Access to Justice Commission should be created and empowered by the Court to:

- 1) Develop and encourage implementation of initiatives to expand access to the civil justice system for unrepresented low income Wisconsin residents;
- 2) Work with all stakeholders – low income families, legal service providers, courts and government agencies, the Governor, the Legislature, social service providers, the State Bar and all its members, the law schools and the public – to achieve the standards set forth in the ABA Principles of a State System for the Delivery of Civil Legal Aid;

3) Support the efforts of the Wisconsin Trust Account Foundation, the Equal Justice Fund and others to develop and implement strategies that will increase funding and other support for access to justice in civil matters;

4) Work to expand the sources of financial support for legal services to low income families, so that they will not depend on the limited support generated by IOLTA funds, mandatory assessments, and the like.

5) Work to maximize the wise and efficient use of available resources, including development of local, regional and/or statewide systems that encourage the coordination of resources and communication among providers;

6) Work to reduce barriers to the justice system by addressing existing and proposed court rules, procedures and policies that affect access to civil justice for low income Wisconsin residents;

7) Review and periodically report on the overall effectiveness of Wisconsin's civil legal services system for low income residents against an objective set of standards and criteria.

In defining the mission of the Commission, it is useful to point out what is not proposed:

- The Commission will not supplant WisTAF, serve as any kind of grant-maker or funding conduit to legal service providers, or seek to duplicate WisTAF's expertise in evaluating how to distribute financial support to legal service providers around the state.
- The Commission will not be engaged in the direct raising of funds in competition with WisTAF or the Wisconsin Equal Justice Fund. The Commission will be a partner of these organizations, assisting them in carrying out their missions.

B. Membership:

The Commission's membership should be broad-based and inclusive. Experience with the other commissions around the nation demonstrates that broad-based Commissions are more credible to the institutions with which they negotiate for support of legal services. Experience demonstrates that in this field consensus is the key to change. If the Commission's membership is broad, the consensus-building begins at home.

Some fear that a commission made up in part of legislators and government executives or their designates will be dominated by politics. That has not been the experience in other commissions. Elected officials are members of or appoint members to commissions in at least thirteen states, including one of the most successful state commissions, the Washington State Access to Justice Board. Involving elected officials in the work of such a commission enhances the stature of the commission and makes the officials more familiar with and committed to the work of the commission.

Accordingly, we propose that the Commission should be composed of not more than 17 members appointed by the Court and nominated as follows:

1. The Supreme Court shall appoint five members, including one member of the Supreme Court, two additional judges, one representative from a Legal Services Corporation (LSC) funded Wisconsin legal services organization and one representative from a non-LSC funded Wisconsin legal services provider.
2. The State Bar of Wisconsin shall nominate four members, including the Chair of the State Bar's Legal Assistance Committee (or the Chair's designee).
3. Marquette University Law School shall nominate one member and the University of Wisconsin Law School shall nominate one member.
4. The Wisconsin Trust Account Foundation shall nominate one member of its board.
5. The Speaker of the Assembly will be invited to nominate one member and the President of the Senate will be invited to nominate one member.
6. The Governor will be invited to nominate three members who are not attorneys.

The membership of the Commission should reflect the ethnic, gender, geographic, and other diversity of Wisconsin.

Should any vacancy in the term of a member occur, the appropriate appointing authority should appoint a successor member who will serve the remainder of the term. Any member whose term expires shall continue to serve until his or her successor is appointed.

The Commission should designate one member as the chairperson of the Board who would serve in that capacity for two (2) years and who would be eligible for reappointment as chairperson for one additional 2-year term. An individual could continue to serve as chairperson notwithstanding the expiration of his or her term on the Commission.

To implement a staggered term system, Commission members should be appointed in classes, designated Class I, Class II, and Class III. The initial appointments of Class I members would end one year from the date their terms begin; the initial appointments of Class II members would end two years from the date their terms begin; and the appointments of Class III members would end three years from the date their terms begin. All membership terms are for three years other than the initial Class I and Class II appointments.

(1) Class I members: one appointee each from the members appointed by the Supreme Court, the Legislature, the Governor and the State Bar of Wisconsin.

(2) Class II members: one appointee each from the members appointed by the Supreme Court, the Legislature, the Governor and the State Bar of Wisconsin.

(3) Class III members: three appointees of the Supreme Court, two appointees appointed by the State Bar of Wisconsin as well as one appointee each from the members appointed by the Governor, the Wisconsin Trust Account Foundation, Marquette University Law School and University of Wisconsin Law School. The Supreme Court appointments of an LSC representative and a non-LSC legal service provider representative will be Class III appointments.

Commission members should be eligible for reappointment for one additional term. A member should not be reappointed to serve more than two successive full terms. A member who has served two successive full terms should be eligible for reappointment after the second anniversary of the date that the member's last full term on the Commission expired.

The Commission should be authorized to conduct its work through the use of committees that are composed in part of persons who are not voting members of the commission. Such a committee structure will enable the Commission to tap the particular expertise of particular stakeholders, such as judges or legislators or fundraisers or legal service providers, without any one specialized group dominating the work of the Commission as a whole.

C. Funding & Administration

When the Commission is fully operational, it should be funded by contributions from the Legislature, the Court and the State Bar. Closing the justice gap is an objective of all of these major stakeholders, and not the responsibility of any one. Furthermore, a commission dependent for its sole support on only one stakeholder is less likely to be perceived as independent of its funding source.

The State Bar commits to sharing this responsibility. The Court should likewise. The Court and the State Bar should seek a concomitant commitment from the Legislature once the Commission is operating.

Recognizing that the Court is unable to quickly allocate the necessary funds, the State Bar of Wisconsin proposes to provide the full cost of funding and staffing the commission for its first three years of operation. We assume that the first, organizational year will cost approximately \$20,000, and that years two and three, in which the Commission builds its capacity, will cost \$50-60,000 each. The funds will be allocated from a reserve fund that the Bar has established for access to justice initiatives.

The Commission will not seek funding for its operations from WisTAF or the Equal Justice Fund. Funding the Commission should not have the effect of reducing the funding otherwise available for providing legal services.

The Commission should meet at least four times each year. All meetings shall be open to the public and noticed in advance.

The Commission should be required to submit a written report on its findings, plans and activities to the Chief Justice of the Supreme Court and the President of the State Bar of Wisconsin at least annually.

IV. Conclusion

More must be done if we are to achieve a justice system that is more equitable and more accessible. The establishment of a Wisconsin Access to Justice Study Commission was a key recommendation from the Access to Justice Study Committee. The State Bar of Wisconsin's Board of Governors voted on May 8, 2007 to accept the Access to Justice Study Committee's report and adopt its recommendations, including the recommendation for the creation of a

Wisconsin Access to Justice Commission. We therefore urge the Supreme Court of Wisconsin to adopt this Petition and establish an Access to Justice Commission in Wisconsin.

Respectfully submitted, this 27th day of June, 2008.

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