



WISCONSIN LEGISLATIVE COUNCIL

Access to Civil Legal Services

Room 411 South
State Capitol, Madison, WI

December 19, 2016
10:00 a.m. - 4:00 p.m.

[The following is a summary of the December 19, 2016 meeting of the Study Committee on Access to Civil Legal Services. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Horlacher called the meeting to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Representative Cody Horlacher, Chair; Senator Duey Stroebel, Vice Chair; Representatives Joan Ballweg, Amanda Stuck, and Lisa Subeck; Senator Robert Wirsch; and Public Members James Gramling, Kimberly Haas, Gregg Moore, David Pifer, David Prosser, Michael Rust, Amy Wochos, and Glenn Yamahiro.

COMMITTEE MEMBERS EXCUSED: Public Members Erin Boyd and Rick Esenberg.

COUNCIL STAFF PRESENT: David Moore, Senior Staff Attorney; and Rachel E. Snyder, Staff Attorney.

APPEARANCES: Legislative Fiscal Bureau.

ATTENTION: This was the final meeting of the Study Committee on Access to Civil Legal Services. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

Approval of the Minutes From the November 14, 2016 Meeting

Representative Ballweg moved, seconded by Mr. Moore, that the minutes of the November 14, 2016 meeting be approved. The motion was approved by voice vote.

Presentation by the Legislative Fiscal Bureau Regarding the Temporary Assistance for Needy Families (TANF) Program

John Gentry, Fiscal Analyst, Mike Steinschneider, Fiscal Analyst, and Rob Reinhart, Program Supervisor, Legislative Fiscal Bureau, gave a brief presentation on the TANF program, focusing primarily on the current status of TANF funds in Wisconsin and the use of TANF funds for legal aid. Mr. Gentry, Mr. Steinshneider, and Mr. Reinhart explained how TANF funds are currently allocated, and provided additional detail about the expenditures and account balances outlined in the memorandum they prepared at Chair Horlacher's request and which Chair Horlacher distributed to the committee.

Committee Discussion of Bill Drafts and Recommendations

LRB-0968/P2, Relating to Establishing a Crime Victims Legal Clinic at the University of Wisconsin (UW) Law School

Legislative Council staff explained that LRB-0968/P2 directs the UW Law School to establish a crime victims legal clinic and to apply to the Wisconsin Department of Justice (DOJ) for grants under the Victims of Crime Act. Staff explained that the bill draft also directs DOJ to award the grant in an amount that DOJ determines is reasonable to support the clinic if DOJ determines that the clinic is eligible for those grants and that sufficient funding is available. Chair Horlacher then invited Jill Karofsky, Executive Director of the Office of Crime Victim Services, DOJ, and Carrie Sperling, Associate Dean for Experiential Learning and Education Innovation, UW Law School, to answer questions about the bill draft. Mr. Pifer said that based on a letter submitted by DOJ opposing the requirement directing DOJ to make the grant, it appeared to him that the bill draft should be withdrawn. He asked Ms. Karofsky and Ms. Sperling for their thoughts on that. Ms. Karofsky told the committee that the committee's work on this topic has been a catalyst to spur discussions between her and Ms. Sperling, and that it appears to her that DOJ and the law school will be able to work together to implement programming that addresses the needs of crime victims without the requirements articulated in the bill draft. Ms. Sperling expressed agreement. There was general consensus among the committee members to express the committee support for this endeavor by making an advisory recommendation rather than by recommending LRB-0968/P2 for introduction. The committee asked Legislative Council staff to work with Ms. Karofsky and Ms. Sperling to draft the language for the recommendation.

LRB-0882/1, Relating to Allowing District Attorneys, Deputy District Attorneys, and Assistant District Attorneys to Engage in the Private Practice of Law for Certain Civil Purposes

Legislative Council staff explained that LRB-0882/1 is a bill draft that would authorize a full-time district attorney, deputy district attorney, or assistant district attorney to provide legal services to a person of limited means or to a charitable, religious, civic, community, governmental, or educational organization if the attorney provides the services without fee and the services are not in conflict with the interests of the district attorney's county. Chair Horlacher explained that this bill was developed by Representative Kessler, who agreed to have the bill brought to the Legislature by the study committee if the study committee wished. Chair Horlacher then invited Leon Creary, staff for Representative Kessler, to present the bill to the committee and respond to any questions. Judge Yamahiro expressed support for the bill and asked whether it was necessary for the bill to only provide authority for district attorneys, deputy district attorneys, and assistant district attorneys to provide pro bono legal services or whether the idea could be expanded to include other categories of publicly employed attorneys. Representative Ballweg also said she thought it would be beneficial to broaden the scope of the bill to include additional categories of attorneys. Mr. Rust expressed concern about expanding the scope of the bill without first researching how malpractice liability would be handled. Justice Prosser encouraged the committee to carefully consider the consequences of any changes to the bill before making changes to it; he also raised a number of questions about language in the bill. Following general committee discussion, the committee agreed to vote on the bill as drafted and to ask Legislative Council staff to draft a separate advisory recommendation on the topic encouraging the Legislature to expand the bill's provisions to additional categories of publicly employed attorneys.

Representative Ballweg moved, seconded by Mr. Gramling, that the committee recommend introduction of LRB-0882/1. The motion was approved on a vote of Ayes, 14 (Reps. Horlacher, Ballweg, Stuck, and Subeck; Sens. Stroebel and Wirch; and Public Members Gramling, Haas, Moore, Pifer, Prosser, Rust, Wochos, and Yamahiro); Noes, 0; and Absent, 2 (Public Members Boyd and Esenberg).

LRB-0982/P2, Relating to the Authority of the Department of Children and Families (DCF), DOJ, and Department of Health Services (DHS) to Allocate Federal Grant Money for Civil Legal Aid

Legislative Council staff explained that LRB-0982/P2 is a bill draft that establishes a recognition by the Legislature that the difficulty low-income, vulnerable, and indigent populations face in fulfilling basic human needs may be caused or compounded by lack of access to civil legal services, and that providing these populations with free or reduced-fee legal services to fulfill these needs can be an effective way to eliminate or reduce the dependency of members of these populations on public assistance or other government programs. The bill draft also provides explicit authority for DCF, DHS, and DOJ to allocate certain federal block grants for the purpose of providing civil legal aid to qualified individuals.

There was general discussion of the bill draft, and committee members proposed modifying the bill draft by doing all of the following:

- Adding provisions that would apply the bill draft to the Department of Administration (DOA) and the Department of Workforce Development (DWD).
- Including "employment" within the illustrative list of basic human needs.
- Replacing the phrase, "the department may allocate federal block grant money" with the phrase "the department is encouraged to allocate federal block grant money."

Justice Prosser also suggested that the bill draft be amended to create an entity modeled after the federal legal aid interagency roundtable to provide a forum for discussions about how access to civil legal services may fit in to, serve, or further the missions, responsibilities, and goals of various state agencies. Following discussion, Chair Horlacher recommended the committee finalize LRB-0982/P2 with the modifications described above, but take up separately the proposal to establish an interagency legal aid entity.

Representative Subeck moved, seconded by Ms. Wochos, that the committee recommend introduction of LRB-0982/P2, with the modifications described above. The motion was approved on a vote of Ayes, 13 (Reps. Horlacher, Ballweg, Stuck, and Subeck; Sen. Wirch; and Public Members Gramling, Haas, Moore, Pifer, Prosser, Rust, Wochos, and Yamahiro); Noes, 1 (Sen. Stroebel); and Absent, 2 (Public Members Boyd and Esenberg).

Draft Recommendation – Veterans Affairs Facilities

Legislative Council staff explained the draft recommendation language relating to veterans affairs facilities. Committee members then discussed the recommendation and proposed some changes to the language of the draft recommendation.

Mr. Yamahiro moved, seconded by Senator Wirch, that the committee approve the following recommendation:

The Joint Legislative Council Study Committee on Access to Civil Legal Services recommends that the Department of Veterans Affairs (DVA) makes available space within the veterans homes the department operates, at least once a month, for consultation between legal aid providers and veterans. In addition, the committee recommends that the DVA facilitate the development of partnerships between DVA, County Veterans Service Officers, and legal aid providers.

The committee voted to approve the language of the recommendation on a vote of Ayes, 14 (Reps. Horlacher, Ballweg, Stuck, and Subeck; Sens. Stroebel and Wirch; and Public Members Gramling, Haas, Moore, Pifer, Prosser, Rust, Wochos, and Yamahiro); Noes, 0; and Absent, 2 (Public Members Boyd and Esenberg).

Draft Recommendation – Mediation

Legislative Council staff explained the draft recommendation language relating to mediation, which recommends that the Wisconsin Supreme Court (the Court) evaluate options for encouraging circuit courts to develop or partner with mediation programs and specifies a variety of considerations the evaluation should include. Several committee members expressed

reservations about whether making this recommendation to the Court would be an appropriate or effective way of expressing the committee's support of mediation as a cost-effective alternative to the court system. Justice Prosser noted that generally, when a person would like the Court to adopt or implement policies, these requests are made by petitioning the Court. Mr. Rust suggested that instead, the recommendation be to encourage counties to consider implementing or expanding mediation.

Representative Subeck moved, seconded by Representative Stuck, that the committee approve the following recommendation:

The Joint Legislative Council Study Committee on Access to Civil Legal Services recommends that counties consider implementing or expanding mediation in civil cases as a cost-effective means of improving the administration of justice.

The committee voted to approve the language of the recommendation on a vote of Ayes, 14 (Reps. Horlacher, Ballweg, Stuck, and Subeck; Sens. Stroebel and Wirch; and Public Members Gramling, Haas, Moore, Pifer, Prosser, Rust, Wochos, and Yamahiro); Noes, 0; and Absent, 2 (Public Members Boyd and Esenberg).

Draft Recommendation - Technology to Improve Access to Legal Information and the Court System

Chair Horlacher invited Ann Olson, Policy Analyst, Office of Court Operations, and Nancy Rottier, Legislative Liaison, Office of the Director of State Courts, to show the committee some examples of the forms and form-filling assistance currently available on the Wisconsin Court System website. Ms. Olson and Ms. Rottier provided a brief overview of the fillable forms and resources available for self-represented litigants and showed the committee where they can be found on the Wisconsin Court System website. Ms. Olson also proposed some modifications to the language in the draft recommendation previously distributed to the community. There was general agreement among the committee to incorporate Ms. Olson's proposed modifications into the draft recommendation.

Mr. Yamahiro moved, seconded by Mr. Gramling, that the committee approve the following recommendation:

The Joint Legislative Council Study Committee on Access to Civil Legal Services recommends that the Wisconsin Court System: (1) explore the expansion of the types of cases and proceedings for which it provides standardized fillable court forms and guided form-filling assistance for self-represented litigants through the Wisconsin Courts website; and (2) explore creation of additional electronic resources to increase access to legal information and support for self-represented litigants. The Study Committee recommends that the Legislature consider supporting these initiatives by providing funding to the Wisconsin Court System for these purposes in the 2017-19 Biennial Budget.

The committee voted to approve the language of the recommendation on a vote of Ayes, 11 (Reps. Horlacher, Ballweg, and Subeck; and Public Members Gramling, Haas, Moore, Pifer, Prosser, Rust, Wochos, and Yamahiro); Noes, 1 (Sen. Stroebel); and Absent 4, (Rep. Stuck; Sen. Wirch; and Public Members Boyd and Esenberg).

Draft Recommendation - Wisconsin Study of the Economic Impact of Civil Legal Aid

Legislative Council staff explained the draft recommendation. Representative Ballweg suggested the substance of this recommendation might instead be included in a proposal she intended to bring forward later in the meeting regarding the creation of an interagency legal aid council. Mr. Moore said that he believed this type of study may be a lower priority because conclusions can currently be extrapolated from similar studies that have been done in other states, and the cost to do a study of this type well may not justify the benefit the study would provide. There was general discussion on whether the need for this type of study would justify its cost. Chair Horlacher concluded the discussion on this topic and told the committee that any further discussion could be included in Representative Ballweg's proposal regarding an interagency legal aid council.

Draft Recommendation - Pro Bono Services and Limited Scope Representation

Legislative Council Staff read the draft recommendation on pro bono services and limited scope representation.

Mr. Gramling moved, seconded by Mr. Rust, that the committee approve the following recommendation:

The Joint Legislative Council Study Committee on Access to Civil Legal Services recommends that the Wisconsin Supreme Court and the State Bar of Wisconsin continue to collaborate to expand opportunities for and promote attorney participation in providing pro bono services and limited scope representation for low-income civil litigants. The Study Committee especially encourages the State Bar of Wisconsin and the Supreme Court to adopt emeritus pro bono practice rules that would waive some of the normal licensing requirements for attorneys agreeing to limit their practice to volunteer service.

The committee voted to approve the language of the recommendation on a vote of Ayes, 12 (Reps. Horlacher, Ballweg, and Subeck; Sen. Stroebel; and Public Members Gramling, Haas, Moore, Pifer, Prosser, Rust, Wochos, and Yamahiro); Noes, 0; and Absent, 4 (Rep. Stuck; Sen. Wirch; and Public Members Boyd and Esenberg).

Draft Recommendation - Crime Victims Legal Program

Legislative Council staff explained that, following the discussion on LRB-0968/P2, Ms. Karofsky and Ms. Sperling had recommended the following language:

The Joint Legislative Council Study Committee on Access to Civil Legal Services recommends that DOJ work with the UW Law School to establish a legal program to address the needs of crime victims in Wisconsin.

Representative Subeck moved, seconded by Representative Ballweg, that the committee approve the above language. The motion passed on a vote of Ayes, 12 (Reps. Horlacher, Ballweg, and Subeck; Sen. Stroebel; and Public Members Gramling, Haas, Moore, Pifer, Prosser, Rust, Wochos, and Yamahiro); Noes, 1 (Public Member Rust); and Absent, 3 (Sen. Wirch; and Public Members Boyd and Esenberg).

Draft Recommendation – Publicly Employed Attorney Pro Bono Civil Legal Service

Legislative Council Staff distributed language for the draft recommendation on publicly employed attorney pro bono civil legal service that the committee had requested earlier in the meeting during the discussion of LRB-0882/1.

Representative Subeck moved, seconded by Justice Prosser, that the committee approve the following recommendation:

The Joint Legislative Council Study Committee on Access to Civil Legal Services recommends that the Legislature explore expanding the categories of publicly employed attorneys, in addition to district attorneys, deputy district attorneys, and assistant district attorneys, who are authorized to provide pro bono civil legal services to low-income individuals.

The committee voted to approve the language of the recommendation on a vote of Ayes, 11 (Reps. Horlacher, Ballweg, and Subeck; Sen. Stroebel; and Public Members Gramling, Haas, Moore, Pifer, Prosser, Rust, and Yamahiro); Noes, 0; and Absent, 5 (Reps. Stuck and Subeck; Sen. Wirch; and Public Members Boyd, Esenberg, and Wochos).

Bill Draft Relating to Establishing an Interagency Legal Aid Coordinating Council

Chair Horlacher opened discussion for the proposal suggested earlier in the meeting to recommend the creation of an interagency entity to provide a forum for discussions about how access to civil legal services may fit in to, serve, or further the missions, responsibilities, and goals of various state agencies. Representative Ballweg proposed language to create an interagency coordinating council that would do the following: (1) review grants available and received that may be used for providing civil legal aid for indigent persons; (2) provide ongoing review of funding options for this purpose; (3) annually report to the Legislature, the Governor, and the Wisconsin Supreme Court; and (4) study and report on the economic impact of funding civil legal services. There was general agreement among committee members about the substance of Representative Ballweg's proposed language. There was also general agreement that the coordinating council should be contained, for administrative purposes, within DOA and comprised of the following members:

- The Secretary, or his or her designee, of DOA, DCF, DHS, and DWD.
- The Attorney General, or his or her designee.
- The Executive Directors of the two Legal Service Corporation funded legal aid providers in Wisconsin.
- One member of the Access to Justice to Justice Commission, appointed by the Governor.
- Two additional public members appointed by the Governor.

There was further general agreement that the coordinating council's report should identify what the agencies have done to meet unmet civil legal service needs.

Representative Subeck moved, seconded by Mr. Gramling, that the committee approve the substance of the bill draft requested above. The motion passed on a vote of Ayes, 8 (Reps. Horlacher, Ballweg, and Subeck; and Public Members Gramling, Moore, Pifer, Prosser, and Yamahiro); Noes, 1 (Sen. Stroebel); and Absent, 7 (Rep. Stuck; Sen. Wirch; and Public Members Boyd, Esenberg, Haas, Rust, and Wochos).

Recommendation Regarding the Allocation of TANF Funds for Civil Legal Aid

Following the discussion and votes on the draft recommendations and bill drafts presented to the committee, Representative Subeck proposed an additional recommendation to be drafted upon committee approval.

Representative Subeck moved that the committee approve the following recommendation:

The Joint Legislative Council Study Committee on Access to Civil Legal Services recommends that the Legislature allocate one million dollars per year in the next biennium, from the state's TANF funds, for civil legal services for low-income individuals, and that half of those funds be used for the purposes TANF funds currently allocated for civil legal services are now being used, but that the other half be used for broader purposes.

The committee began discussion on Representative Subeck's motion. Mr. Gramling offered a second for the motion; however, Chair Horlacher informed the committee that because a quorum was no longer present, the committee could not hold a vote on the motion.

Other Business

There was no other business.

Plans for Future Meetings

Representative Subeck requested that Chair Horlacher consider holding an additional meeting to allow a vote on her motion regarding the use of TANF funds, as well as to review the details of the bill draft the committee had requested regarding the creation of an interagency legal aid coordinating council. Chair Horlacher informed the committee that he would consider the request, evaluate whether an additional meeting is necessary, and communicate his decision to the committee. Subsequently, in a letter, dated January 5, 2017 (attached), Chair Horlacher informed the committee that he had decided the December 19, 2016, meeting would be the committee's final meeting.

Adjournment

The meeting was adjourned at 4:00 p.m.

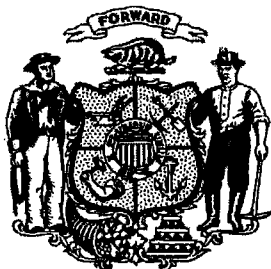
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Attachment

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Terry C. Anderson
Director
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Deputy Director

January 5, 2017

Members of the Study Committee
on Access to Civil Legal Services:

Thank you for your service to the Joint Legislative Council. You have all made valuable contributions to the study committee's work with your time, expertise, and ideas.

As you know, I was asked to consider scheduling an additional meeting so that the committee could discuss a request made during the December 19, 2016, meeting to recommend that the Legislature include funding from the state's Temporary Assistance for Needy Families (TANF) block grant for civil legal services in the next budget. After careful consideration of several factors, including the time constraints imposed by the commencement of another legislative biennium, I have decided that the committee will not meet again.

However, to ensure that the study committee's report reflects that the TANF block grant was suggested by some committee members as a possible funding source for civil legal services, I have directed Legislative Council staff to include in the report that some committee members expressed an interest in recommending that the Legislature appropriate TANF funds for civil legal services, but that consensus was not reached on this issue.

A final mail ballot will be distributed in the near future with instructions for submission. Thank you again for your service. It was a pleasure and an honor working with you.

Sincerely,

Handwritten signature of Cody J. Horlacher in black ink.

Representative Cody Horlacher
Chair, Study Committee on Access to Civil Legal
Services

CH:mcm;ksm

cc: Terry C. Anderson
Senator Roger Roth
Representative Robert Brooks

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Lisa Subeck

STATE REPRESENTATIVE

December 21, 2016

Representative Cody Horlacher, Chair
Legislative Council Study Committee on Access to Civil Legal Services
Room 214-North
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Representative Horlacher,

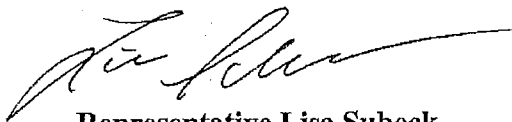
As I indicated during the December 19 meeting of the Legislative Council Study Committee on Access to Legal Services, I request that you schedule an additional meeting of the committee before our recommendations to the Joint Legislative Council are finalized.

It is unfortunate that the absence of several members of the committee resulted in a lack of quorum prior to the scheduled end of our December 19 meeting. It is also unfortunate that committee members did not receive the requested Legislative Fiscal Bureau memo regarding federal grant funds until the afternoon of the last business day prior to the scheduled final meeting.

At our December 19 meeting, the committee made a number of changes to draft recommendations, added at least one complex recommendation for a bill draft that still requires final committee approval, and was unable to discuss or vote on a recommendation before the committee for which there was a motion and a second prior to losing quorum. For these reasons, coupled with the late distribution date of the LFB memo containing information critical to any recommendations involving federal funding, I make this request to hold an additional meeting of the committee before its recommendations are finalized.

If you would like to discuss this or any other concern, I would be happy to meet with you. Thank you for your consideration, and I look forward to your response.

Sincerely,



Representative Lisa Subeck
78th Assembly District

cc: Speaker Vos
Minority Leader Barca
Committee Members

78TH ASSEMBLY DISTRICT

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