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WISCONSIN STATE REPRESENTATIVE

41ST ASSEMBLY DISTRICT

**Assembly Bill 115 & Assembly Bill 116
Committee on State Affairs
Testimony of Representative Joan Ballweg**

Thank you, Chair Swearingen and members of the Committee on State Affairs, for holding this hearing on Assembly Bills 115 and 116, two bills developed by the Study Committee on Access to Civil Legal Services. It was my privilege to serve on that committee alongside a number of dedicated and knowledgeable public members.

Last year, I received a letter signed by all seven Justices of the Wisconsin Supreme Court encouraging Senator Lazich and me, as co-chairs of the Joint Legislative Council, to create a study committee on access to legal services in civil matters. In their letter, the Justices explained that “thousands of Wisconsinites are unable to afford legal services in civil cases [and] the Court believes that legal services are critical in many of these cases.” The Court’s letter stressed the importance of initiating, what it called a “no-holds-barred study of how to provide legal services to people who cannot afford them.” According to the letter, “[t]he legal process frequently affects the most basic human concerns: protection from domestic violence, family law, custody and placement, guardianship, housing, and veterans’ benefits.” The Justices acknowledged the Court’s role in addressing the issue, but noted that “there is only so much that the judiciary can do on its own to generate revenue.”

In response to that letter, the Joint Legislative Council established the Study Committee on Access to Civil Legal Services, which was one of only eight studies chosen out of seventy-one nominations. The study committee was directed to review the need for legal services by indigent civil litigants and identify non-GPR sources of revenue to provide them with legal assistance.

Consistent with this charge, the committee discussed various federal block grants as possible sources of revenue. There is precedent for this in Wisconsin. For example, in the last budget, the Legislature appropriated one million dollars from the state’s Temporary Assistance to Needy Families (TANF) block grant to provide civil legal services related to domestic violence and sexual abuse. Based on its discussion, the study committee developed two bills to facilitate the use of federal block grants for providing civil legal services to low-income individuals.

Assembly Bill 115

Assembly Bill 115 encourages, but does not require, DOA, DHS, DCF, DWD, and DOJ to allocate any federal block grant funds that they administer to provide civil legal aid to qualified individuals, if the grant is intended to benefit low-income, indigent, vulnerable, or at-risk populations and the use is permitted by federal law.



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Assembly Bill 116

Assembly Bill 116 creates an interagency legal aid coordinating council for the purpose of facilitating discussion among various stakeholders, including state agencies, about how access to civil legal services may serve or further the missions, responsibilities, and goals of the agencies. The council is loosely modeled after the federal Legal Aid Interagency Roundtable and would consist of 10 members representing DOA, DCF, DHS, DWD, DOJ, Wisconsin Judicare, Legal Action of Wisconsin, the Wisconsin Access to Justice Commission, and the public.

Among other responsibilities, the council would be required to annually report to the Governor, the Legislature, and the Supreme Court on these evaluations and on the amount of money spent by the agencies to facilitate access to civil legal services. The council would also be required, on a one-time basis, to prepare a report on the economic impact of funding civil legal services.

Thank you for considering these bills. I am happy to answer any questions you may have. David Moore and Rachel Snyder, Legislative Council staff to the committee, are also available to answer any questions.



Supreme Court of Wisconsin

16 EAST STATE CAPITOL
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Patience Drake Roggensack
Chief Justice
Shirley S. Abrahamson
Ann Walsh Bradley
David T. Prosser, Jr.
Annette Kingsland Ziegler
Michael J. Gableman
Rebecca G. Bradley
Justices

Telephone (608) 266-1880
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Web Site: www.wicourts.gov

J. Denis Moran
Director of State Courts

Diane M. Fremgen
Clerk of Supreme Court

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.

Senator Mary Lazich
Representative Joan Ballweg
January 19, 2016
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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.

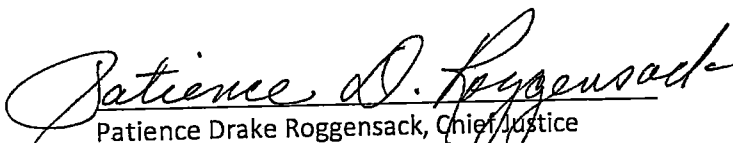
The record demonstrates that the Court is willing to do its share in addressing a social problem, but there is only so much that the judiciary can do on its own to generate revenue.

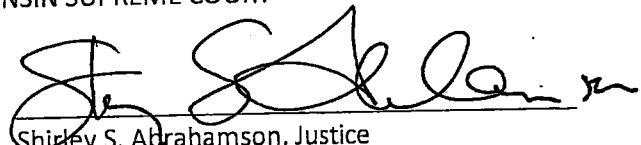
This letter represents our appeal to you to create a study committee to examine how we can better provide legal services to our citizens who need them but cannot afford them. We know you understand that ignoring the issue will not solve it or make it go away. As always, in Wisconsin we move forward when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

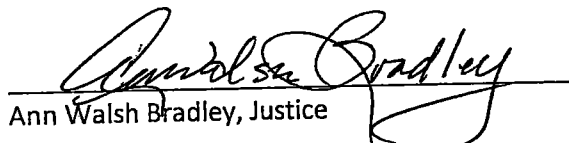
Thank you for your serious consideration.

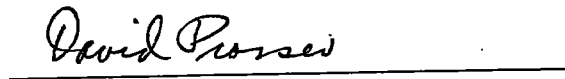
Respectfully,

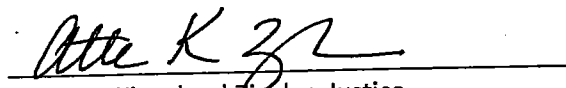
WISCONSIN SUPREME COURT

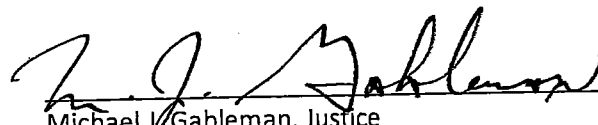

Patience Drake Roggensack, Chief Justice

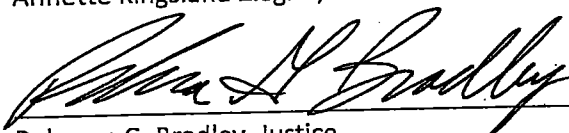

Shirley S. Abrahamson, Justice


Ann Walsh Bradley, Justice


David T. Prosser, Jr., Justice


Annette Kingsland Ziegler, Justice


Michael J. Gableman, Justice


Rebecca G. Bradley, Justice



STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.®

To: Members, Assembly Committee on State Affairs
From: Lisa Roys, Director of Public Affairs
Date: March 15, 2017
Re: Support of AB 115 and AB 116

The State Bar of Wisconsin supports AB 115 and AB 116. Access to the courts is vital for all Wisconsin citizens. Everyone is entitled to their day in court in a fair and equitable manner. A well-functioning judicial system contributes to public safety and economic certainty while protecting vulnerable citizens and contributing to the economic climate. AB 115 and 116 and the work of the Joint Legislative Council Study Committee on Access to Civil Legal Services is an important first step in the process of finding a long-term and sustainable solution to the justice gap in Wisconsin.

The State Bar of Wisconsin commends the study committee's chair, Representative Cody Horlacher, and all of the members of the study committee for their work on this important issue. If you have any questions or need additional information, please call Cale Battles at 608-250-6077 or cbattles@wisbar.org or Lynne Davis at 608-250-6045 or ldavis@wisbar.org.

CIVIL LEGAL SERVICES IN WISCONSIN

What is "civil legal services?"

- It's not about criminal defense services or personal injury lawsuits. Civil legal services programs don't handle those types of issues.
- It is about helping the most vulnerable Wisconsin residents who need assistance with civil legal issues to protect their safety, family, housing, income and other basic necessities of life.

Helping Those Who Cannot Help Themselves

State funding for Wisconsin's civil legal services programs helps low-income individuals and families who cannot help themselves due to illness, age, abuse, disability or the complexity of their problem. The people served are:

- Victims of domestic violence and others who need protection from abuse
- Facing the loss of their home due to illegal evictions and foreclosures
- Seniors who want to live in dignity and security
- Disabled residents who need protection and advice
- Families with health and disability issues
- Veterans and service members who need a little extra help
- Children and families trying to rebuild their lives



A Cost-Effective Investment

For every \$1 of state civil legal services appropriation funding, Wisconsin's civil legal services providers have a track record of recovering over \$10 for their clients in the form of child support, maintenance, federal benefits, security deposits and more.

Helping people resolve legal problems early also means avoiding higher costs later:

- Fewer emergency room visits, shelter stays and police calls for abuse victims,
- Higher property values for neighborhoods when unsafe living conditions are remedied or unlawful foreclosures are stopped and people can remain in their homes.
- Increased child support payments reduces the need for public benefits
- Barriers to employment are removed, reducing claims for unemployment and other benefits
- Veterans who get the benefits they're due can contribute more to our state's economy
- Children in safer, stable families can focus on learning

Testimony of Amy Devine, Public Policy Coordinator of Disability Rights Wisconsin, before the Wisconsin Assembly Committee on State Affairs in Support of 2017 AB 115 and 2017 AB 116

Dear Representative Swearingen (Chair), Representative Tauchen (Vice-Chair), and distinguished members of this committee:

Disability Rights Wisconsin is the state's Protection and Advocacy system for people with disabilities. DRW has the authority and responsibility to pursue legal, administrative, and other appropriate remedies to ensure the protection of, and advocacy for, the rights of people with disabilities or mental illness within the State and to investigate cases of abuse and neglect. We serve as the ombudsman for adult long term care participants, and assist victims of crime, violence, and sexual assault with disabilities to navigate the legal system. We provide free legal representation to our constituents.

People with disabilities and mental illness are nearly three times more likely to interact with the legal system, to be abused or neglected, and to be poor. Thus, our constituents have a keen interest in access to legal counsel. The Legislative Council Study Committee on Access to Civil Legal Services was charged with reviewing the need for indigent civil legal aid and identifying additional non-GPR sources to assure that all Wisconsin residents can access justice. All too often in Wisconsin, legal aid agencies must turn people away because we don't have enough lawyers to help them.

Given the unmet need for legal services, DRW would have welcomed a direct unrestricted appropriation for indigent civil legal aid that included the needs of people with disabilities for legal counsel. Wisconsin is one of only a handful of states that do not provide a direct appropriation for civil legal aid. Nevertheless, the two bills before you represent approaches that hold promise for leveraging and utilizing existing systems and funding to increase access to justice.

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RICE LAKE

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715 736-1252 FAX

disabilityrightswi.org

800 928-8778 consumers & family

The path to economic self-sufficiency and stability for veterans, people with disabilities, and victims of domestic violence and sexual assault is lined with legal problems that require an attorney's intervention. For many low-income people with disabilities, the effort to obtain and retain employment will falter unless civil legal aid assists them to stop unscrupulous lending practices, gain access to employment supports, get a restraining order or divorce from an abusive partner, or challenge discriminatory practices. It is time to fund civil legal aid to address these legal challenges.

Along with our colleague legal services agencies, Disability Rights Wisconsin believes that the provision of legal representation in civil legal matters is not only a matter of fundamental fairness given our adversarial legal system, it also makes great fiscal sense for our state budget. We believe Disability Rights Wisconsin should have a place at the table to represent these concerns.

Both of these bills will move Wisconsin forward to ensure that civil legal needs are recognized as part of a systemic, strategic, holistic conversation about how we effectively and efficiently help Wisconsin's veterans, seniors, people with disabilities, victims of violence and sexual assault, and ex-offenders who are re-entering our communities. These bills can help us increase coordination and collaboration among state agencies around the delivery of civil legal aid, and permanently raise the profile of civil legal aid as part of the solution.

Thank you for your time and consideration of these very important bills.

March 12, 2017

Representative Rob Swearingen
Representative Gary Tauchen
Members of the Assembly Committee on State Affairs

Chair Swearingen, Vice-Chair Tauchen, and Members of the Committee:

I am writing to offer my support for Assembly Bill 116, relating to the authority of several Wisconsin agencies to allocate federal grant money to civil legal aid, which has come to you from the Legislative Council Study Committee on Access to Civil Legal Services.

This legislation, along with Assembly Bill 115, which is also in front of you, promises great progress towards addressing the unmet legal needs of Wisconsin's low-income veterans, crime victims, and many other vulnerable and underserved Wisconsinites this legislature and your state's agencies seek to help regain stability in their lives. These two bills represent truly groundbreaking and innovative strides forward.

I was honored to have the opportunity to address the Study Committee during its work this summer and fall. As the former Executive Director of the White House Legal Aid Interagency Roundtable, I know firsthand the challenges we in government face to ensure essential services especially in our resource-constrained environment. At the federal level, we convened the 22-agency Roundtable recognizing that many federal programs can be more effective and efficient when they include civil legal aid, yet too many did not. I had the privilege of sharing with the Study Committee our experience identifying programs that help prevent homelessness among veterans, get foster children into forever families, and remove obstacles to employment. We worked with and across agencies to improve these programs' outcomes by adding civil legal services alongside other services already being provided. The Roundtable promoted smart and effective programming and spending of already appropriated funds.

Assembly Bill 116, relating to the authority of several Wisconsin agencies to allocate federal grant money to civil legal aid, will enable Wisconsin's legal aid programs to expand their capacities to partner with state and local governments and social service providers, to together address priorities like increasing access to housing, health care services, employment, education, and improving family stability and public safety. Numerous federal block and formula grant rules and guidance already allow states to include legal services among the services provided. Yet even when the evidence shows the importance of legal aid to addressing an identified state priority – like homelessness among veterans or removing obstacles to employment – that can be supported with specific federal formula funds, too often legal aid is overlooked and underutilized.

March 12, 2017

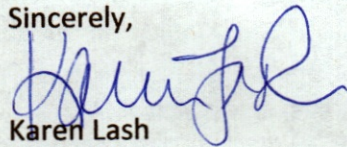
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To take just one example, Wisconsin's share of the Crime Victims Fund includes victim assistance formula grants. After a comprehensive study conducted by the U.S. Department of Justice Office for Victims of Crime that included input from state administrators, local victim service providers, and victims themselves, the resulting Vision 21: Transforming Victims Services Final Report devoted an entire chapter to the unmet legal needs of crime victims. The Justice Department reflected these findings in the recently finalized rule clarifying that states can use its victim assistance funds for legal services that address, for example, domestic violence, elder abuse, consumer fraud, and identity theft. Tapping into some of the tens of millions of federal block grant dollars Wisconsin already receives can help meet the civil legal needs of Wisconsinites while producing better outcomes and strengthening state agency social service programs and goals.

A vote to pass Assembly Bill 116 will put Wisconsin on the map as a model for the rest of the country to follow. I hope you will recommend this bill move out of Committee with strong bipartisan votes, an action that will amplify your example with other states similarly seeking ways to address the same problems.

Although I am no longer with the Federal government, I will soon be joining the American University School of Public Affairs to launch a new effort to support efforts at the state level precisely of the kind envisioned by these two bills. If I can be of any assistance as Assembly Bill 116 moves through the legislative process, please do not hesitate to contact me.

Sincerely,



Karen Lash

Karen@lash.us