



## WISCONSIN LEGISLATIVE COUNCIL

### Access to Civil Legal Services

Room 413 North (the G.A.R. Room)  
State Capitol, Madison, WI

July 27, 2016  
10:00 a.m. – 4:30 p.m.

[The following is a summary of the July 27, 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 Erin Boyd, James Gramling, Kimberly Haas, Gregg Moore, David Pifer, David Prosser, Michael Rust, Amy Wochos, and Glenn Yamahiro.

COMMITTEE MEMBER EXCUSED: Public Member Rick Esenberg.

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

APPEARANCES: Senator Mary Lazich and Representative Joan Ballweg, Co-Chairs, Joint Legislative Council; Terry Anderson, Director, Legislative Council Staff; Jeff Brown, Pro Bono Program Manager, State Bar of Wisconsin; April Faith-Slaker, Director, Resource Center for Access to Justice Initiatives, American Bar Association; Dan Idzikowski, Executive Director, Disability Rights Wisconsin; Kate Schilling, Legal Services Manager, Elder Law and Advocacy Center, Greater Wisconsin Agency on Aging Resources, Inc.; and Marsha Mansfield, Director, Economic Justice Institute, University of Wisconsin Law School.

## **Opening Remarks**

Chair Horlacher welcomed the committee members to the meeting and introduced the Co-Chairs of the Joint Legislative Council, Senator Mary Lazich and Representative Joan Ballweg, and Terry Anderson, Director of the Wisconsin Legislative Council staff.

Senator Lazich and Representative Ballweg thanked the members for serving on the committee and provided a brief explanation of how the topic of access to civil legal services was selected for study.

Terry Anderson also welcomed and thanked the members for their service.

## **Introduction of Committee Members**

At the request of Chair Horlacher, each member introduced himself or herself to the committee.

## **Presentation by State Bar of Wisconsin**

### **Jeff Brown, Pro Bono Program Manager**

Mr. Brown explained, generally who may be eligible for free civil legal services based on federal poverty level guidelines. He also summarized the many ways that civil legal services are delivered to low-income individuals, including via legal aid attorneys, volunteer attorneys, law students, and self-help resources.

Mr. Brown then provided the committee with an overview of the discussions and activities regarding the issue of access to civil legal services for low-income individuals that have been taking place in Wisconsin over the past 10 years, focusing on the State Bar of Wisconsin's report, *Bridging the Justice Gap: Wisconsin's Unmet Legal Needs*, and the Wisconsin Access to Justice Commission's report, *The State of Equal Justice in Wisconsin*.

Mr. Brown described some of the actions taken in response to the reports, including: (1) a legislative appropriation in the 2015-17 Biennial Budget of targeted funding for civil legal services to abuse victims; (2) Wisconsin Supreme Court rules changes expanding limited scope representation, directing a portion of unclaimed class action settlement funds to support civil legal services, and allowing lawyers to claim continuing legal education (CLE) credit for pro bono service; and (3) education offered to judges on their authority to appoint counsel in civil cases.

Mr. Brown briefly described funding mechanisms for civil legal services, including public and private funding, and concluded his presentation by describing specific efforts made by the Wisconsin State Bar to address the issue. Mr. Brown highlighted the State Bar's support of pro bono services, describing the establishment of the Pro Bono Honor Society and Wisconsin Legal Advice Online in collaboration with the Wisconsin Access to Justice Commission, and the State Bar's Lawyer Referral and Modest Means programs.

## **Presentation by American Bar Association**

### **April Faith-Slaker, Director, Resource Center for Access to Justice Initiatives**

Ms. Faith-Slaker began by providing the committee with background information on the issue of access to civil legal services on a national level. She noted that state and national studies documenting the “justice gap” between legal needs and the resources available to meet them began in the 1980s. She then described some of the national findings regarding the “justice gap.” She noted that each year, half of American households face civil justice issues involving basic human needs, such as living income, shelter, and care of children. She said that many people do not identify their problems as legal problems and only 14% of civil justice problems are addressed in court or before a hearing body. Ms. Faith-Slaker stated that one out of five people in the United States qualify for free civil legal assistance, but more than half are turned away by legal aid organizations due to lack of funds or staff, and three out of five people in civil cases go to court without a lawyer.

Ms. Faith-Slaker briefly discussed the positive economic impact of civil legal aid, and noted that each study conducted to measure the impact of investing in civil legal aid has concluded that there is a positive return. She also reviewed national funding trends for civil legal aid, highlighting that limited financial resources are one of the largest barriers preventing civil legal aid providers from addressing the needs of low-income individuals. She told the committee that Wisconsin is ranked 26<sup>th</sup> in the United States in terms of overall funding for legal aid.

Ms. Faith-Slaker provided the committee with a variety of ideas for addressing the issue of access to civil legal services, highlighting examples from other states. These approaches included increasing funding for civil legal services by establishing or raising certain types of fees. She also highlighted pro bono initiatives developed in other states, methods for helping self-represented litigants help themselves, and ways to promote limited scope representation. She also discussed the need to address language barriers faced by litigants with limited English proficiency and the importance of developing a coordinated state plan to address access to civil legal services. Ms. Faith-Slaker discussed the need to periodically conduct surveys and assessments so that initiatives can be tailored to the needs of a particular community and efficacy can be assessed.

## **Presentation by Disability Rights Wisconsin**

### **Dan Idzikowski, Executive Director**

Mr. Idzikowski discussed the legal needs faced by people with disabilities. He noted that people with disabilities are particularly vulnerable for a variety of reasons, including the difficulty many face in obtaining legal assistance due to their individual circumstances and symptoms, such as difficult behaviors, feelings of being overwhelmed, and communication problems. He discussed research that concludes that people with disabilities are more likely to experience legal problems and, when they do, they tend to experience a greater number of legal problems intertwined with nonlegal problems.

Mr. Idzikowski explained that Disability Rights Wisconsin (DRW) is part of a national system of advocacy for people with disabilities. It receives funding from a variety of sources, including state and federal funding. DRW provides civil legal services through a variety of programs, including its FamilyCare and IRIS Ombudsman Program and its Disability Benefits Specialist Program. In some circumstances, DRW can provide direct legal representation, but DRW often provides information and referral services. As an example, DRW attorneys train non-attorney disability benefits specialists to provide certain advocacy services in each county and will provide direct legal representation to some cases that are referred from the Disability Benefits Specialist Program.

Mr. Idzikowski noted that DRW handles over 8,000 cases per year and provides another 8,000 people with information and referrals. However, he told that committee that DRW must turn away thousands of cases each year. He requested that the state provide more funding for civil legal services to address the need.

### **Presentation by Greater Wisconsin Agency on Aging Resources, Inc.**

#### **Kate Schilling, Legal Services Manager, Elder Law and Advocacy Center**

Ms. Schilling began by describing the organizational structure of the Elder Law and Advocacy Center within the Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR), a primarily federally funded nonprofit organization. In general, GWAAR provides legal assistance through the Elder Benefit Specialist (EBS) program and through the Wisconsin Guardianship Support Center (GSC). Attorneys with the EBS provide legal supervision for county-level benefits specialists who work with clients who are at least 60 years old. They can help with a variety of issues, including Medicare and other health insurance issues, housing issues, consumer law, and other government benefit program issues. The attorneys with the EBS can provide direct legal representation to clients, but, as Ms. Schilling discussed, there are a variety of legal issue areas for which they cannot provide assistance, including estate planning and probate, family law, taxes, unemployment insurances, and workers compensation.

Ms. Schilling also described the services provided by the GSC. The GSC, unlike the EBS, does not provide direct legal representation. Rather, it provides free legal information about a variety of issues, including guardianships, protective placements, powers of attorney, and advanced directives.

### **Presentation by University of Wisconsin Law School**

#### **Marsha Mansfield, Director, Economic Justice Institute**

Ms. Mansfield explained that the Economic Justice Institute is the “home” of a majority of the law school’s civil legal clinics: (1) the Family Court Clinic; (2) the Neighborhood Law Clinic; (3) the Consumer Law Clinic; (4) the Immigrant Justice Clinic; and (5) the Consumer Mediation Clinic. Each clinic provides legal assistance to low-income individuals in different ways. In general, law students in each clinic are able to provide legal information and a limited amount of direct representation under the supervision of practicing attorneys. The clinics are generally limited to providing services within the Dane County area, due to lack of capacity and resources.

Ms. Mansfield noted that being unable to obtain legal assistance to handle an initial legal problem can result in a snowball effect that results in greater costs to the community over time. She stated that many situations involving public benefits could be avoided if the underlying problem had been addressed with the assistance of legal counsel.

Ms. Mansfield noted that, in some situations, public education may be a tool to reduce the need for direct legal representation. As an example, she described a consumer education initiative conducted by the Consumer Law Clinic at the Dane County Courthouse through which law students provided litigants with information and assistance filling out foreclosure forms. Ms. Mansfield suggested that statewide education efforts could reduce the need for direct legal assistance in some issue areas.

### **Discussion of Committee Assignment**

Chair Horlacher requested that each committee member share a response to the presentations and share any ideas for the next committee meeting. In summary, the committee members expressed an interest in the following issues:

- Easing licensure requirements for emeritus attorneys to encourage them to provide pro bono service.
- The need for legal assistance with probate matters.
- The appointment of counsel in civil cases, commonly known as “Civil Gideon.”
- The distribution of remaining class action settlement funds to the Attorney General.
- The use of technology in other states to address the need for access to civil legal services.
- Access to broadband, especially in rural areas.
- The potential to create a state income tax credit for attorneys who provide pro bono services.
- Evaluating the return on an investment in civil legal services.
- The potential to redirect existing appropriations to civil legal services if permitted by federal law.
- More clearly defining the term “indigent” in the committee’s scope to ensure that low-income people, even those not found statutorily indigent, may benefit from actions taken by the committee.
- Expand access to highly trained, supervised legal advocates that are not licensed attorneys.
- Alternative dispute resolution, including mediation.
- Addressing legal barriers preventing public sector attorneys from providing pro bono services.

- Mandating a minimum number of pro bono hours for attorney licensing, or if not mandating, increasing CLE credit for meeting 50 hour goal.
- Expanding law school clinics.
- Expanding the use of limited scope representation and reduced fee agreements.
- County reimbursement mechanisms for the costs of appointed counsel.
- More clearly defining the scope of the need for civil legal services in quantifiable terms.
- Adopting fee-shifting in certain legal issue areas.
- Simplify the uncontested divorce process.
- Encouraging the development of a legal insurance market for legal services.
- Explore innovative practices in order to compete for innovation grants.
- Create incentives for law firms whose attorneys do pro bono work.

### **Other Business**

There was no other business.

### **Plans for Future Meetings**

Chair Horlacher has scheduled the next meetings for Wednesday, September 14, and Wednesday, October 12.

### **Adjournment**

The meeting was adjourned at 4:30 p.m.

RES:mcm