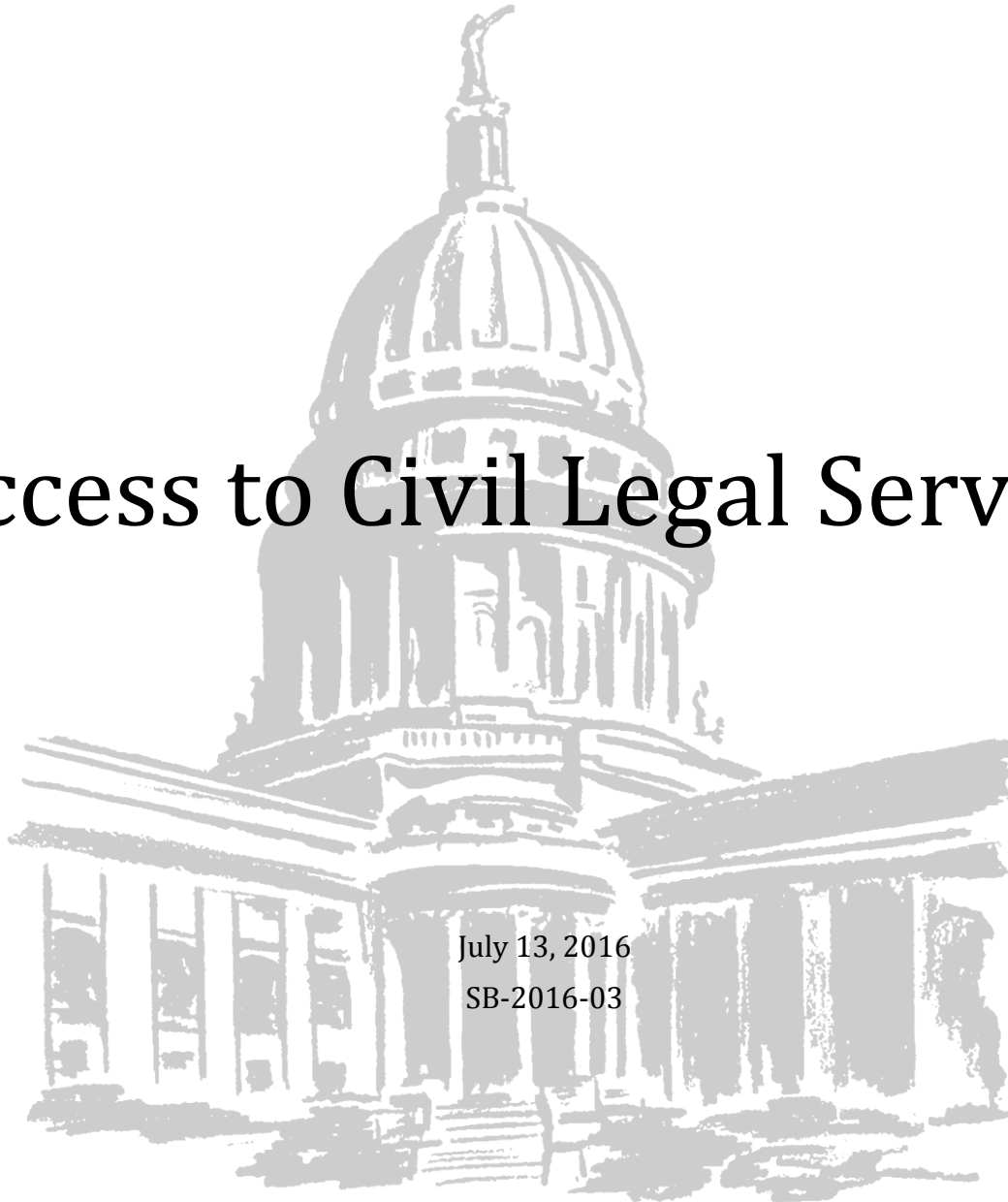


# Staff Brief

## Access to Civil Legal Services



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SB-2016-03

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# INTRODUCTION

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The Study Committee on Access to Civil Legal Services was directed to do the following: (1) review the need for legal services by indigent civil litigants; (2) identify additional non-general purpose revenue (GPR) sources of revenue to provide civil legal services for the indigent; and (3) review current operations. This Staff Brief provides background information on the following topics:

- **Part I** summarizes the right to court-appointed counsel, distinguishing between criminal and civil actions, and describes circumstances under which an indigent individual may be entitled to the aid of court-appointed counsel in civil matters.
- **Part II** discusses recent initiatives in Wisconsin to study access to civil legal services, highlighting studies conducted by the State Bar of Wisconsin and by the Wisconsin Access to Justice Commission.
- **Part III** describes how civil legal services are delivered to persons who are unable to afford a lawyer in Wisconsin.
- **Part IV** describes how civil legal services to low-income individuals are funded in Wisconsin.

This Staff Brief was prepared by David Moore, Senior Staff Attorney, and Rachel Snyder, Staff Attorney.



# PART I – RIGHT TO COURT-APPOINTED COUNSEL

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Individuals who interact with the justice system, whether in criminal or civil matters, have a right to be represented by legal counsel of their choice at their own expense. In some circumstances, the law grants certain individuals the right to representation by court-appointed counsel at public expense, as discussed below.

## CONSTITUTIONAL RIGHT TO COURT-APPOINTED COUNSEL

Both the U.S. Constitution and the Wisconsin Constitution provide that an individual has a right to the assistance of counsel when facing criminal prosecution. [U.S. Const. amend. VI.; Wis. Const. art. I, s. 7.] Courts have interpreted the constitutional provisions to require the appointment of counsel in criminal proceedings that could result in the loss of liberty for individuals deemed indigent, and, therefore, unable to pay for an attorney. [*Gideon v. Wainwright*, 372 U.S. 335 (1963); *County of Dane v. Smith*, 13 Wis. 585 (1861).] This requirement is codified in Wisconsin’s statutes. [s. 967.06, Stats.]

The Wisconsin Constitution also addresses legal representation in civil matters, providing that an individual has a right to “prosecute or defend his suit” in any state court either *pro se* or by an attorney. [Wis. Const. art. I, s. 21.] However, this provision has not been interpreted to universally require court-appointed counsel for indigent civil litigants. Rather, indigent civil litigants are entitled to court-appointed counsel only in certain circumstances.

## STATUTORY RIGHT TO COURT-APPOINTED COUNSEL IN CERTAIN CIVIL PROCEEDINGS

Wisconsin law grants a statutory right to court-appointed counsel in certain civil proceedings,<sup>1</sup> including the following:

- **CHIPS, UCHIPS, and JIPS Proceedings:** Children, expectant mothers, and juveniles who are the subjects of CHIPS, UCHIPS, and JIPS<sup>2</sup> proceedings are entitled to court-appointed counsel under certain circumstances. [ss. 48.23 (1m) and (2m) and 938.23 (1m), Stats.]
- **Protective Placement and Services:** Adults adjudicated incompetent and minors aged 14 or older with developmental disabilities who are the subjects of petitions for protective placement or services are entitled to court-appointed counsel under certain circumstances. [s. 55.10 (4) (a), Stats.]
- **Involuntary Termination of Parental Rights (TPR):** Indigent parents have a right to court-appointed counsel in an involuntary TPR proceeding. [s. 48.23 (2) (b), Stats.]

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<sup>1</sup> This Staff Brief does not discuss to what extent a litigant may waive his or her right to court-appointed counsel, nor does it include all circumstances under which a court may or is required to appoint a guardian ad litem rather than legal counsel.

<sup>2</sup> Children, unborn children, and juveniles in need of protection or services.

- **Contested Adoptions:** Indigent birth parents are entitled to court-appointed counsel in contested adoption proceedings. [s. 48.23 (2) (b), Stats.]
- **Paternity Actions:** Indigent alleged fathers may be entitled to court-appointed counsel in paternity actions under certain circumstances. [s. 767.83, Stats.]
- **Guardianships:** Indigent subjects of certain guardianship petitions are entitled to court-appointed counsel under certain circumstances. [ss. 54.42 (1) and 54.64 (2) (b), Stats.]
- **Civil Commitment:** The subject of a civil commitment proceeding is entitled to court-appointed counsel under certain circumstances. [ss. 51.15 (9), 51.20 (3), 51.35 (1) (e), 51.45 (13) (b), and 51.60, Stats.]
- **Parental Consent for an Abortion:** A minor who petitions for a waiver of parental consent to obtain an abortion is entitled to court-appointed counsel. [ss. 48.23 (1m) (cm) and 48.375, Stats.]
- **Commitment of Sexually Violent Persons:** Indigent subjects of sexually violent persons civil commitment proceedings are entitled to court-appointed counsel. [s. 980.03, Stats.]
- **Civil Contempt Proceedings:** An indigent subject of a civil contempt proceeding where the state is an actor and the subject's liberty is threatened is entitled to court-appointed counsel under s. 967.06, Stats. [*Brotzman v. Brotzman*, 91 Wis. 2d 335 (Ct. App. 1979).]
- **Tuberculosis Quarantine:** An indigent subject of a petition for quarantine for infectious tuberculosis is entitled to court-appointed counsel. [s. 252.07 (9) (d), Stats.]

## JUDICIAL AUTHORITY TO APPOINT COUNSEL

Courts have not interpreted either the U.S. Constitution or the Wisconsin Constitution to grant an absolute right to court-appointed counsel for indigent civil litigants, and indigent civil litigants are statutorily entitled to court-appointed counsel only as described above. Therefore, in most civil proceedings, an indigent litigant is not automatically entitled to court-appointed counsel. In some circumstances, however, a court may be obligated to appoint counsel if it determines that legal representation is required to provide fundamental fairness under the U.S. Constitution or may have the authority to appoint counsel as it deems appropriate.

### Fourteenth Amendment Due Process

The law presumes that there is no right to appointed counsel if a civil litigant is not facing at least potential deprivation of physical liberty. However, this presumption may be overcome if court-appointed counsel is necessary to provide the litigant with constitutionally protected due process. Due process under the 14<sup>th</sup> Amendment of the U.S. Constitution prohibits a state from depriving any person of a fundamentally fair trial.

Although not necessarily entitled to court-appointed counsel, an indigent civil litigant is entitled to an individualized determination of whether due process requires the appointment of counsel in a particular case. A judge must determine whether due process requires court-appointed counsel in a civil proceeding on a case-by-case basis by weighing the following elements against the

presumption against appointed counsel: (1) the private interests at stake; (2) the risk that the procedures used will lead to erroneous decisions; and (3) the government's interest at stake. [*Lassiter v. Dept. of Social Services*, 452 U.S. 18 (1981); *Piper v. Popp*, 167 Wis. 2d 633 (1992).]

## Inherent Authority

Wisconsin law also recognizes a court's inherent authority to appoint counsel for indigent individuals of its own volition. This authority is derived from a court's general authority to manage court operations rather than from an individual's constitutionally protected right to court-appointed counsel. The Wisconsin Supreme Court has stated that "a court may use its inherent discretionary authority to appoint counsel in furtherance of the court's need for the orderly and fair presentation of a case," but that such situations are rare. [*Joni B. v. State*, 202 Wis. 2d 1, 10-11 (1996).]

## CIVIL GIDEON

As described above, indigent defendants are constitutionally entitled to court-appointed counsel in criminal proceedings that could result in a loss of liberty. State law grants indigent civil litigants a statutory right to court-appointed counsel in particular civil proceedings, many of which could result in a loss of liberty. In certain circumstances, a court may determine that an indigent civil litigant is entitled to court-appointed counsel as a matter of due process or may appoint counsel of its own volition, although courts rarely make such appointments. As a result, a majority of indigent or low-income individuals must handle civil legal matters without the assistance of counsel.

Some have argued that constitutional due process should be interpreted to require the appointment of counsel for indigent civil litigants in all circumstances under which basic human needs are at stake. According to this argument, the fulfilment of basic human needs, such as food, shelter, clothing, heat, medical care, safety, and child custody, is as fundamental as liberty; therefore, civil litigants should be entitled to legal representation to protect the fulfilment of such needs to the same degree that criminal defendants are entitled to legal representation in order to protect their liberty. This concept is known colloquially as "Civil Gideon" in reference to the U.S. Supreme Court decision, *Gideon v. Wainwright*, which granted the right to court-appointed counsel for indigent criminal defendants.

In 2010, Legal Action of Wisconsin filed Petition 10-08 with the Wisconsin Supreme Court asking that the Court amend its rules to provide a right to court-appointed counsel for indigent civil litigants. The Court denied the petition in 2012, citing concerns about the cost of the proposal, but reserved the possibility of requesting state funding for the appointment of counsel for indigent civil litigants in future state biennial budgets after the results of a Wisconsin Access to Justice Commission appointment of counsel pilot program could be analyzed.<sup>3</sup> However, the State Bar did not provide the funding necessary to launch the pilot program.

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<sup>3</sup> The Wisconsin Supreme Court's order addressing Petition 10-08 is available on its website: <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=78599>.

On September 30, 2013, Legal Action of Wisconsin renewed its call for Civil Gideon by filing Petition 13-15<sup>4</sup> with the Wisconsin Supreme Court, requesting that the Court establish a pilot program and create a rule governing the appointment of counsel in civil cases. The Wisconsin Access to Justice Commission submitted a letter to the Court in support of the petition on October 1, 2014. The petition is currently pending.

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<sup>4</sup> Petition 13-15 and supporting documents are available on the Wisconsin Supreme Court's website: <https://www.wicourts.gov/scrules/1315.htm>.



## PART II – RECENT WISCONSIN INITIATIVES TO STUDY ACCESS TO CIVIL LEGAL SERVICES

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The accessibility of civil legal services to low-income individuals is a topic of great concern at the local, state, and national levels. Recent studies in Wisconsin, discussed below, have highlighted the legal areas with the most need and have spurred creative solutions to address the problem.

### STATE BAR OF WISCONSIN: BRIDGING THE JUSTICE GAP

In July of 2005, the President of the State Bar of Wisconsin created the Access to Justice Committee by appointing lawyers and judges to study the legal needs of low-income Wisconsin residents. In March of 2007, the committee released its final report, entitled “*Bridging the Justice Gap: Wisconsin’s Unmet Legal Needs.*” The committee focused on the following primary goals:

- To identify low-income Wisconsin residents with unmet legal needs.
- To identify the reasons why the needs were not being met.
- To recognize what has been done and make recommendations about further action to address the needs.

To conduct the study, the committee surveyed 1,122 households with incomes ranging from below 125% up to 200% of the federal poverty guidelines and examined research from Wisconsin and other jurisdictions. Overall, the committee determined that up to 80% of low-income Wisconsin households that face a legal need, over 500,000 individuals, do so without legal assistance, while 60% of the time the party on the other side of the issue is represented by counsel. According to the study, the top five legal areas of need are: (1) loss or reduction of public benefits; (2) financial or consumer-related issues; (3) employment issues; (4) wills and estates; and (5) family law.

The committee determined that the provision of civil legal services in Wisconsin, by private attorneys and legal aid, addresses fewer than 20% of the legal problems faced by low-income residents. The committee identified a myriad of problems that are created when individuals are unable to obtain assistance with civil legal problems, including the appearance of a lack of fairness in the proceedings and inefficiencies and delays created in court proceedings by inexperienced *pro se* litigants.

The committee identified lack of funding as the primary reason for the lack of civil legal services for low-income individuals and made the following primary recommendations<sup>5</sup> to address the need:

- The Wisconsin Supreme Court, Governor, Legislature, and State Bar should jointly establish a permanent Access to Justice Commission.
- The Legislature should provide enough funding for civil legal services to low-income residents to provide services for those who are currently turned away due to lack of funding.
- The Legislature should fund self-help centers connected to each Wisconsin courthouse.
- The Wisconsin Supreme Court should modify its ethics rules and procedural rules to permit paralegals to advocate in court and before agencies on a limited basis.
- Clients should be required to pay for a portion of the legal services they receive based on their ability to pay.
- Civil legal services should not be financed by an increase in filing fees.

### **Response to the Report: Wisconsin Access to Justice Commission**

In response to the Access to Justice Committee's recommendations, and at the request of the State Bar of Wisconsin, the Wisconsin Supreme Court established the Wisconsin Access to Justice Commission (the Commission) in 2009. The Commission is a 501(c)(3) non-profit organization consisting of a 17-member board appointed by the following entities: (1) the Wisconsin Supreme Court; (2) the State Bar of Wisconsin; (3) the Dean of the Marquette University (MU) Law School; (4) the Dean of the University of Wisconsin (UW) Law School; (5) the Wisconsin Trust Account Foundation board; (6) the Speaker of the Wisconsin Assembly; (7) the President of the Wisconsin Senate; and (8) the Wisconsin Governor.<sup>6</sup>

The Commission's mission is "to develop and encourage means of expanding access to the civil justice system for unrepresented low income Wisconsin residents." [S.C.R. 14.02 (2).] The Commission has been active since its establishment, supporting a variety of projects and initiatives to increase access to civil legal services, some of which are discussed in more detail in Parts III and IV of this Staff Brief. According to the Commission's website, some of its primary projects include: (1) preserving federal funding, restoring state funding, and expanding private funding for civil legal services; (2) developing new financial support resources; (3) raising public awareness about the need for access to civil legal services; and (4) encouraging volunteers to provide civil legal services.<sup>7</sup>

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<sup>5</sup> The committee also made recommendations specifically for the following six entities or types of lawyers: (1) the Wisconsin Supreme Court; (2) state and federal agencies; (3) lawyers; (4) the State Bar of Wisconsin; (5) public interest law firms and nonprofit legal services organizations; and (6) the UW Law School and MU Law School.

<sup>6</sup> Board member profiles can be found on the Commission's website: <http://wisati.org/governance>.

<sup>7</sup> For a more detailed discussion of the Commission's projects, see its website about projects: [http://wisati.org/projects?doing\\_wp\\_cron=1468329197.5098519325256347656250](http://wisati.org/projects?doing_wp_cron=1468329197.5098519325256347656250).

## **WISCONSIN ACCESS TO JUSTICE COMMISSION: THE STATE OF EQUAL JUSTICE IN WISCONSIN**

As part of its plan to raise public awareness about the need for access to civil legal services, and as a follow-up study to the State Bar's 2007 report, the Commission held a series of six public hearings around the state in 2012. The Commission heard testimony from 137 witnesses about the need for legal assistance among low-income individuals. In September of 2013, the Commission released a report entitled "*The State of Equal Justice in Wisconsin*," which summarizes the major themes and particular legal areas of need identified at the hearings and sets forth recommendations for additional action.

### **Fundamental Themes**

According to the report, five major themes were repeatedly discussed at the hearings:

- The need for civil legal services has increased since the State Bar's report in 2007 as the ability to pay for those services has decreased due to the economic downturn between 2008 and 2013.
- Significant efforts have been made to address the increasing need in creative ways, including efforts to help low-income individuals represent themselves, but these efforts are not enough. Such efforts include providing simplified forms, form completion assistance, increased provision of information about procedural and substantive law, and conducting legal advice clinics.
- Large numbers of unrepresented litigants create significant problems for and undermine the integrity of the court system.
- Providing legal assistance to low-income individuals is cost effective for a number of reasons, including the cost savings that result from cases being resolved before they become more contentious.
- The scope of the need for access to civil legal services is so large that solutions require statewide, coordinated efforts involving all interested parties and stakeholders, including the court system, the Legislature, county governments, the State Bar, individual attorneys, the Wisconsin law schools, community organizations, and others.

### **Areas of Legal Need**

The report highlights the following five areas of significant legal need that affect the basic human needs for safety, shelter, care of children, and subsistence income:

- Domestic violence and elder abuse.
- Evictions and other landlord-tenant issues.
- Foreclosures.
- Family law.

- Receipt of public benefits through government programs.

## **Recommendations**

The Commission made nine overarching recommendations to address the continued need for access to civil legal services by low-income individuals:

- Public and private sources must provide stable funding for civil legal services.
- Currently disparate public legal education efforts should be combined, coordinated, and shared.
- Every Wisconsin courthouse should have a legal resource center.
- All levels of the legal system should encourage and support pro bono service.
- Research into the efficacy and economic benefits of delivering civil legal services to low-income individuals should be conducted.
- Judges should use their authority under existing law to appoint counsel for low-income individuals in cases involving basic human needs when necessary to ensure a fair hearing.
- The use of adequately trained and supervised nonlawyers should be expanded.
- The availability and use of interpreters or interpretation services for individuals who need assistance with legal issues outside of the courtroom should be expanded.
- Successful mediation programs should be replicated in order to reduce the complexity and cost of resolving legal disputes.

# PART III – DELIVERY OF LEGAL SERVICES TO LOW-INCOME INDIVIDUALS

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There is no uniform system for delivering legal services to persons who cannot afford, or have limited ability to pay for, legal services. Nor is there uniformity in the type of legal services low-income individuals receive. Some organizations that provide legal services to low-income individuals provide attorneys to represent eligible clients on particular matters. Others provide general information to help individuals navigate the legal system.

## NONPROFIT LEGAL AID PROVIDERS

Nonprofit legal aid organizations constitute a significant way in which legal services are provided to those who are unable to pay for them. To receive services from these organizations, individuals must generally meet income eligibility requirements, which are based on the federal government's poverty level. To qualify for free services, clients must generally have a gross income that is less than 125% of the federal poverty level. For a family of four, a person would need to have an annual income of less than \$30,375 to qualify for services. Organizations that have income eligibility requirements may, however, have some exceptions to these requirements, such as for victims of domestic violence.

The two largest nonprofit legal aid providers in Wisconsin are Legal Action of Wisconsin (Legal Action) and Wisconsin Judicare (Judicare).

### Legal Action

Legal Action provides legal services for low-income people in Wisconsin's 39 southern counties. It has offices in Green Bay, La Crosse, Madison, Milwaukee, Oshkosh, and Racine, and provides legal services in the areas of: consumer law; family law; public benefits and health law; housing; and social security. Legal Action's areas of practice also include the following special projects:

- **Disabled Offenders Economic Security Project.** This project provides disabled offenders being released from Wisconsin prisons with help securing housing, food, and other benefits.
- **The Road to Opportunity Project.** This project helps clients navigate license and record problems that can be barriers to employment (such as the loss of a driver's license).
- **Low-Income Tax Clinic.** This clinic provides assistance with federal tax matters.
- **SeniorLAW Project.** SeniorLAW provides free legal assistance to Milwaukee County residents who are 60 and older.

- **Migrant Farmworker Project.** This project assists migrant farmworkers on issues related to employment, housing conditions, public benefits, and unemployment compensation, among other topics.

In fiscal year 2014, Legal Action closed 5,834 cases. The majority of these cases were related to housing, family law matters, and income maintenance, with these types of cases comprising 28 percent, 26 percent, and 25 percent of the cases it closed, respectively. Nearly two-thirds of its clients that year (63 percent) were women.<sup>8</sup>

## Judicare

Judicare, located in Wausau, provides civil legal services for low-income individuals in Wisconsin's northern 33 counties. Judicare's areas of practice include: bankruptcy; child care; consumer protection; education; employment; family law; health; housing; income maintenance; individual rights; landlord/tenant; Medicaid/Medicare; public benefits; social security; tax law; veterans' benefits; and wills and estates. Judicare's practice also includes an Indian law office, which provides representation to low-income Native Americans in civil matters involving Indian law issues.

In addition to the legal services provided by Judicare's staff attorneys to eligible clients, Judicare also partners with participating attorneys in the private bar who are interested in taking cases either pro bono or at a reduced rate.

In fiscal year 2014, Judicare closed 1,353 cases. Of these, nearly half (48 percent) were family law cases. Eighteen percent were related to housing, 12 percent to consumer issues, and 9 percent to income maintenance. Almost three quarters of Judicare's clients that year (74 percent) were women.<sup>9</sup>

## Other Nonprofit Legal Aid Providers

In addition to Legal Action and Judicare, there are a number of civil legal service providers that serve low-income populations throughout the state.<sup>10</sup> Some are specifically focused on serving individuals within certain geographic areas. For example, the Legal Aid Society of Milwaukee provides free assistance to low-income residents of Milwaukee County.

## ADVOCACY ORGANIZATIONS

Organizations that advocate for specific populations, such as victims of domestic violence or sexual assault, the elderly, veterans, or persons with various types of disabilities, are also a significant source of legal assistance for the populations they serve. The legal assistance these organizations provide varies from providing an attorney to represent individuals with specific types of legal issues to providing general legal information or resources to help unrepresented individuals

<sup>8</sup> <http://www.lsc.gov/grants-grantee-resources/program-profile?RNO=550010>.

<sup>9</sup> <http://www.lsc.gov/grants-grantee-resources/program-profile?RNO=550020>.

<sup>10</sup> The Wisconsin State Law Library maintains a county legal resources database, which lists organizations that provide legal assistance throughout the state. This database is located here: <http://wilawlibrary.gov/topics/county.php>.

navigate the legal system. Other types of advocacy organizations provide legal assistance within a specific area of law. For example, ABC for Health, Inc., is devoted to assisting individuals with health-related legal issues.

## PRO BONO SERVICES

Legal services are also provided to persons who are unable to afford them through the pro bono service of the state's members of the bar. The Wisconsin Supreme Court's Rules of Professional Responsibility, which govern members of the legal profession in the state, identify the provision of legal services to those unable to pay as the professional responsibility of every lawyer. To that end, the rules encourage, but do not require, all lawyers to render at least 50 hours of pro bono service per year, and to render a substantial majority of those hours to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons of limited means. [SCR 20:6.1]

According to the State Bar of Wisconsin<sup>11</sup>, based on the results of a voluntary, online survey of its members in 2013, State Bar members reported providing 57,217 hours of pro bono legal services in 2012, including:

- 22,703 hours of free legal services to low-income individuals.
- 20,912 hours of legal services at a substantially reduced fee to low-income individuals.
- 10,510 hours of free legal services to organizations that serve low-income individuals.
- 3,092 hours of legal services at a substantially reduced fee to organizations that serve low-income individuals.

### *Recent Developments: Rule Petition 15-05*

To encourage State Bar members to increase pro bono services to low-income individuals and organizations that serve low-income individuals, the State Bar of Wisconsin recently requested that the Wisconsin Supreme Court allow lawyers to claim a limited number of continuing legal education (CLE) credits for certain pro bono services.

Currently, all lawyers practicing in Wisconsin must attend a minimum of 30 hours of approved CLE every two years. The State Bar's petition asked that the Court amend this requirement to allow lawyers to claim one CLE credit for every five hours of pro bono legal service provided through a qualified pro bono program up to a maximum of six credits per two-year reporting period. The petition defined "qualified pro bono program" as any of the following:

- A pro bono program operated by a nonprofit legal services organization that receives funding from WisTAF.
- A pro bono program operated by a Wisconsin law school.

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<sup>11</sup> 2012 Pro Bono Contributions of Wisconsin Lawyers, State Bar of Wisconsin (August 1, 2013).

- A pro bono program in existence on the date that the rule is adopted that is operated by a Wisconsin bar association.
- A program approved by the Board of Bar Examiners as a qualified pro bono program.

According to the Office of the Director of State Courts, the State Bar’s rule petition passed unanimously; as of the date of publication of this Staff Brief, the written order is pending.

## STATE BAR OF WISCONSIN

The State Bar of Wisconsin operates various programs to facilitate its members’ engagement in providing free or reduced cost legal services to low-income individuals. One way it does this is by operating a pro bono program that provides training and resources for attorneys interested in performing pro bono work.

The State Bar also operates the following programs:

- **Modest Means Program.** The modest means program connects clients who meet income eligibility requirements with attorneys who agree to provide legal services at a reduced cost.
- **Legal Assistance for Military Personnel Project.** Attorneys participating in this project help service members and veterans with their legal issues in Wisconsin.
- **Wills for Heroes.** Under the Wills for Heroes program, volunteer attorneys and support personnel prepare basic estate plans for eligible first responders at locally organized legal clinics.
- **Lawyer Referral and Information Service.** The State Bar operates a “lawyer hotline,” staffed by volunteer lawyers. Lawyers staffing the hotline provide general legal information and answers to simple legal questions.

The State Bar’s Pro Bono program also sponsors Wisconsin Legal Advice Online (WLAO), which was created by the Access to Justice Commission. WLAO is an internet-based service that allows eligible Wisconsin residents to pose legal questions to volunteer lawyers.

## LAW SCHOOL CLINICAL PROGRAMS

Both the UW Law School and MU Law School operate clinics in which students, supervised by law school faculty and licensed attorneys, provide legal assistance to individuals who may not be able to otherwise afford this assistance.

For example, the Economic Justice Institute at UW Law School is comprised of five clinical programs that both train law students and provide legal services to low-income clients who need assistance with a variety of issues, including consumer law, family law, landlord-tenant, and public benefits problems. Similarly, MU Law School operates a volunteer legal clinic that provides free, brief legal advice and appropriate referrals on non-criminal legal issues, and a pro bono program that partners interested students with a variety of community legal service providers throughout



Milwaukee. Both law schools also support programs that assist students interested in pursuing careers in public interest law.

## **OTHER SOURCES OF LEGAL INFORMATION**

A final, but important, source of assistance for individuals without the means to pay for legal services consists of resources, forms, and guides, provided by various organizations, to assist unrepresented persons in navigating the legal system themselves.

For example, the Wisconsin State Law Library maintains an A-Z list of legal topics on its website with links to relevant publications, information, and forms under each topic. The State Law Library's website also contains a list of organizations that provide legal representation, mediation, and arbitration services for Wisconsin residents.

The Wisconsin Court System's website also provides various publications and forms to assist individuals in representing themselves. These publications include a guide to small claims court, a guide to appellate procedure for the self-represented, and a directory of self-help legal resources in Wisconsin counties. The websites of many circuit courts also contain basic forms or information to assist individuals with legal issues.

Many advocacy organizations also help members of the populations they serve navigate the legal system. This may include assisting individuals with forms and providing general legal information.



# PART IV – FUNDING FOR CIVIL LEGAL SERVICES

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Legal services for low-income individuals are funded from a variety of sources, including federal and state grants, the legal profession, and private-sector donations.

## Federal

Federal funding for civil legal services for low-income individuals is primarily made by the Legal Services Corporation (LSC). LSC was established by Congress in 1974 to distribute grants to qualified programs furnishing legal assistance to eligible clients. LSC has seven grant programs:

- Basic Field Grant.
- Disaster Relief Emergency Grant.
- Leadership Development Program.
- Loan Repayment Assistance Program.
- Pro Bono Innovation Fund.
- Technology Initiative Grant Program.
- Veterans Appeals Pro Bono Grant Program.

LSC currently awards grants to two civil legal service providers in Wisconsin: Legal Action and Judicare. Both organizations receive basic field grants. In fiscal year 2014, LSC provided \$4,241,375 in funding to Legal Action, which represented 43 percent of Legal Action's total funding.<sup>12</sup> In the same year, LSC provided \$1,159,922 in funding to Judicare, representing 62 percent of Judicare's total funding.<sup>13</sup>

## WisTAF

The Wisconsin Supreme Court created the Wisconsin Trust Account Foundation, Inc. (WisTAF), in 1986, to receive funds from the interest on lawyers' trust accounts (IOLTA) and provide grants to organizations that provide civil legal services to indigent people. In 2005, the Wisconsin Supreme Court created an additional source of funding for WisTAF grants, the Public Interest Legal Services Fund (PILSF), funded by annual assessment of \$50 on each active member of the State Bar of Wisconsin.

In 2016, WisTAF awarded grants totaling \$978,250. These grants were made to the following organizations:

- ABC (Advocacy and Benefits Counseling) for Health, Inc.
- Aids Resource Center of Wisconsin.
- Catholic Charities of the Archdiocese of Milwaukee, Inc.

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<sup>12</sup> <http://www.lsc.gov/grants-grantee-resources/program-profile?RNO=550010>.

<sup>13</sup> <http://www.lsc.gov/grants-grantee-resources/program-profile?RNO=550020>.

- Catholic Charities of the Diocese of La Crosse, Inc.
- Center Against Sexual & Domestic Abuse, Inc.
- Centro Legal por Derechos Humanos.
- Community Justice, Inc.
- Disability Rights Wisconsin.
- Legal Action of Wisconsin, Inc.
- Legal Aid Society of Door County.
- Legal Aid Society of Milwaukee.
- Portage County Legal Aid Society.
- Wisconsin Judicare.

*Recent Developments: Rule Petition 15-16*

Earlier this year, the Wisconsin Supreme Court approved the use of residual funds from class action awards or settlements as another source of funding for WisTAF. Residual funds from a class action settlement or award exist for a variety of reasons, such as if class members cannot be located or fail to submit claims. When this happens, the court determines what the next best use of the funds is; awards from these funds are called “cy pres,” meaning “next best use.” According to the petition requesting the use of these funds for civil legal services to low-income individuals, 14 other states have either amended rules of civil procedure or enacted statutes to provide that some or all of the residual class action funds be used for this purpose. Effective January 1, 2017, in Wisconsin, at least 50 percent of any residual funds from a class action settlement or award must be disbursed to WisTAF to support direct delivery of legal services to persons of limited means in non-criminal matters.

## **State**

Funding for legal services for low-income individuals is also provided through state grants; however, state funding for these services has varied significantly over the last decade and a half, and has not always been provided. Below is a chronological summary of relevant budget provisions:

- **1999-2001 Biennial Budget.** In this budget, the Legislature created a statutory provision requiring the Department of Children and Families (DCF) to distribute to WisTAF an amount equal to the amount received by WisTAF from private donations, up to \$100,000 in each fiscal year, from the state’s federal Temporary Assistance for Needy Families (TANF) block grant. These funds could be used only for the provision of legal services to individuals who are eligible for TANF benefits, under federal law, and whose incomes were at or below 200% of the federal poverty line.
- **2003-05 Biennial Budget.** This budget modified the above provision to make DCF’s distribution of TANF funds as a matching grant to WisTAF permissive rather than mandatory.

- **2007-09 Biennial Budget.** The 2007-09 budget appropriated \$1,000,000 of GPR for grants for civil legal services, beginning in 2008-09. These funds were provided to WisTAF, which then distributed the funds received as grants to programs that provide civil legal services to low-income persons.
- **2009-11 Biennial Budget.** The 2009-11 Biennial Budget replaced the GPR appropriation to WisTAF with grants funded by program revenue (PR) generated by an increase in the justice information surcharge from \$6 to \$18. The justice information surcharge is a fee the court applies whenever any of a variety of types of claims are filed. Along with changing the source of funding for grants to organizations that provide civil legal services to low-income individuals, the 2009-11 Biennial Budget provided that the amount of the grants would be \$1,000,000 in 2009-10 and would increase to \$1,250,000 in 2010-11.<sup>14</sup>
- **2011-13 Biennial Budget.** This budget eliminated the state grant program to organizations that provide for civil legal services to low-income persons.
- **2015-17 Biennial Budget.** The most recent budget provided \$500,000 annually, from Wisconsin's federal TANF block grant, for grants to provide legal services to low-income families with civil legal needs related to domestic abuse, sexual abuse, and individual-at-risk restraining orders and injunctions. The \$500,000 annual appropriation is to DCF for a grant to WisTAF. WisTAF may then make annual awards of up to \$75,000 for programs that meet specified criteria. The grant funding may only be used to provide legal services in civil matters for which federal TANF block grant moneys may be used, and only to assist individuals who are eligible to receive TANF and whose gross incomes are at or below 200% of the federal poverty level.

## Private Sector Funding

Organizations that provide civil legal services to low-income individuals generally have funding needs that exceed the amount of funding available from federal and state governments and WisTAF. As a consequence, these organizations also depend on donations from individuals or businesses within the private sector. One organization that assists providers of civil legal services in obtaining funds from the private sector is the Wisconsin Equal Justice Fund (WEJF). WEJF is a private fundraising effort that currently raises funds to support Disability Rights Wisconsin, Legal Action, and Judicare.

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<sup>14</sup> Currently, the Justice Information Surcharge is \$21.50. \$15.50 of this goes to the Department of Administration for justice system programs, and \$6 go to the Circuit Court Access Program (CCAP).