

STATE OF WISCONSIN

SUPREME COURT

In the Matter of: Rule Petition 10-08

The Petition of 1,320 Wisconsin residents for an amendment to Supreme Court Rule 11.02 requiring that Circuit Court judges appoint attorneys at public expense for indigent persons in certain civil cases pursuant to the criteria set forth in the rule.

EXECUTIVE SUMMARY

1,320 Wisconsin residents submitted, on September 30, 2010, a petition to the Wisconsin Supreme Court which requested that SCR 11.02 be amended to require that Circuit Court judges appoint attorneys at public expense for indigent litigants where the assistance of counsel is necessary to protect those litigants' rights to basic human needs, including sustenance, shelter, safety, health and child custody. The amendment would also require that, in making the determination as to whether the assistance of counsel is needed, the court consider the personal characteristics of the litigant, such as age, mental capacity, education and prior experience with the courts, and the complexity of the case.

I. Cost and Sources of Funds

It is impossible to calculate an accurate cost of appointed civil counsel, and it is difficult to calculate an approximate cost. A very rough cost estimate is \$56 million per year.

The necessary funds can come from counties, reimbursed by the state. State sources of funds include the Court Support Services Surcharge, General Purpose Revenue, and the reallocation of portions of an array of filing fees. The cost of appointed counsel is only 1.49% of state General Fund appropriations for state operations. The cost is only .17% of the state budget.

II. Wisconsin courts have the authority to institute and implement this rule.

The Wisconsin Supreme Court has the inherent power and authority to institute this rule. This authority has been declared in a long line of cases. The Circuit Courts have the power, again under ample case law, to appoint counsel pursuant to the proposed rule, and to order the counties to pay the cost.

III. The appointment of counsel is necessary to ensure the efficient and

effective functioning of the court and the fair administration of justice.

A. Efficient and effective functioning.

Eleven trial court judges stated in an amicus brief that: 1) *pro se* litigants are a significant and growing part of state trial courts= caseloads; 2) unsophisticated *pro se* litigants complicate the process and burden the entire system; 3) *pro se* litigants complicate not only their own cases, but can increase the burden and transaction costs of other parties, represented or not, and 4) the court=s inherent power to appoint counsel has not been an effective means of appointing counsel.

These points were spelled out earlier by the Supreme Court=s Wisconsin Pro Se Working Group in its December 2000 report.

Circuit Courts have, without question, declined to exercise the power that they already possess to appoint counsel in civil cases, and thereby to ensure the efficient and effective functioning of the court, and to fairly administer justice. It is important for the Supreme Court to issue a rule that will require that trial courts exercise that power where necessary, and that will provide guidance for that exercise.

B. Fairness and equality require the appointment of counsel in

crucial civil cases.

Our Declaration of Independence states that it is a self-evident truth that Aall men are created equal.@ In furtherance of this fundamental truth, the United States Supreme Court has declared that the right to the aid of counsel is a fundamental principle of liberty and justice that lies at the base of all our civil and political institutions. It also declared that there can be no equal justice where the kind of trial a man gets depends on the amount of money he has. This is what happens in Wisconsin=s justice system today.

An attorney is vitally important to real justice for indigent litigants in civil cases because of the fundamental nature of the interests at stake in those cases and the serious consequences of their loss. These vital interests include the care and companionship of children, a home versus homelessness, and medical care necessary for life.

Indigent litigants are ill-equipped to litigate their rights without counsel. They are often poorly educated. Many do not speak or understand English. Many have serious physical disabilities and health problems. When in court, they are distressed and disoriented. They do not Aknow the ropes@ of the local legal culture. For many, life is an overwhelming

struggle.

When a *pro se* litigant is opposed by an attorney, the contest is unwholesomely unequal, which creates a high risk of a miscarriage of justice.

The legal obstacles encountered in litigating one's own case make a lawyer essential. *Pro se* litigants must have enough knowledge to do everything from competently drafting an answer to picking a jury. Almost none have this knowledge. Lawyers do.

The importance of an attorney to real justice has long been recognized and is widely accorded. This notion is not new, and is not confined to a few small pockets in the world. Counsel was appointed in England as early as 1495. In early America, slaves were appointed counsel.

The importance of an attorney to real justice is recognized in numerous statutes (including 12 in Wisconsin) and decisions in the United States and in other countries. The European Court of Human Rights and many other countries grant a right to counsel, in one form or another, in civil cases. At least forty-four countries do so.

IV. Consultations

The petitions have consulted with numerous individuals, bar associations and other groups about this petition.