

MEMORANDUM

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TO: Honorable Justices of the Wisconsin Supreme Court

FROM: David Callender, Legislative Associate *DC*

DATE: January 19, 2012

SUBJECT: Supreme Court Rules Hearing 10-8, In the Matter of the Petition to Establish a Right to Counsel in Civil Cases

The Wisconsin Counties Association (WCA) has reviewed the draft statement regarding the petition for a rule requiring circuit court judges to appoint counsel at public expense for indigent persons in certain civil cases, as well as the January 13, 2012 memorandum from the Wisconsin Access to Justice Commission.

While WCA takes no position on the issue of whether and when it is appropriate to expand the use of publicly funded counsel in civil cases, WCA has significant concerns regarding the potential cost of such a rule and its fiscal impact on Wisconsin counties. These concerns have been detailed in WCA's previous written submissions to the Court and WCA's testimony at the Court's October 27, 2011 public hearing on the proposed rule.

The Court appears to acknowledge WCA's concerns in the following passage in the proposed statement:

The parameters of the proposal are difficult to discern and the effect of the proposal on circuit courts and counties is largely unknown but may be substantial.

WCA continues to have concerns about the potential implications of pilot programs that expand the access to publicly funded counsel in certain civil cases. WCA believes that both the Court and counties must be attentive to the possibility that establishing such programs, even on a pilot basis, may in the long term create a demand for such services to be provided at county expense. As WCA has stated previously, counties simply do not have the fiscal capacity at this time to provide new services without making reductions to existing programs.

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The Court's statement and the memorandum from the Access to Justice Commission note the Wisconsin to Access to Justice Commission and the Director of State Courts have begun work on developing and implementing an Appointment of Counsel Pilot Project for indigents in one or more selected categories of civil cases involving basic human needs.

As they are currently constituted, the Access to Justice Commission and its ad hoc work group do not include any representatives or designees from county government, WCA, or county clerks of court. WCA believes such participation is essential so that counties' concerns are addressed. It is essential, in WCA's view, that the pilot programs to provide civil counsel do not become the basis for new unfunded mandates for counties.

Therefore, WCA respectfully requests that Court takes steps to ensure that representatives from WCA, county government, and county clerks of courts be appointed to any body responsible for the development and implementation of any Appointment of Counsel pilot project.

WCA thanks the Court for its consideration and looks forward to working with the Court on this issue.

If you have any questions, please contact me.