

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 10-08

In the matter of the petition to establish a right to counsel in civil cases.

FILED

**DRAFT
(1-17-2012)**

A. John Voelker
Acting Clerk of Supreme
Court
Madison, WI

On September 30, 2010, John F. Ebbott, Executive Director, Legal Action of Wisconsin, on behalf of 1,320 Wisconsin signatories, including citizens, judges, and lawyers, filed a petition requesting this court amend SCR 11.02 to require that circuit court judges appoint an attorney at public expense for an indigent litigant when the circuit court determines that the assistance of counsel is necessary to protect that litigant's rights to basic human needs, including sustenance, shelter, safety, health and child custody.

Specifically, the petition asked the court to amend SCR 11.02 by adding sub. (2) to read as follows:

(2) Appearance by attorney. PROVIDED. Where a civil litigant is indigent (defined as below 200% of the federal poverty guidelines), the court shall provide counsel at public expense where the assistance of counsel is needed to protect the litigant's rights to basic human needs, including sustenance, shelter, clothing, heat, medical care, safety and child custody and placement. In making the

determination as to whether the assistance of counsel is needed, the court may consider the personal characteristics of the litigant, such as age, mental capacity, education and knowledge of the law and of legal proceedings, and the complexity of the case.

The petition was supplemented, in January 2011, by a lengthy memorandum and appendix.

The court conducted a public hearing on the petition on October 4, 2011. The hearing attracted numerous speakers and written submissions. Most of the people who appeared or commented on the petition favored its adoption. The single point of opposition to the petition focused on the costs of appointing counsel, not the need for or value of providing legal services for the indigent in civil cases. Following the hearing, some additional written materials were submitted to the court, including petitioners' supplemental petition seeking a pilot program on domestic violence at county expense, filed on November 17, 2011.

The petition describes the great unmet need of low-income persons for legal assistance in civil matters. In recognition of this need, the court has established Wisconsin Trust Account Foundation, Inc. and has imposed a \$50 assessment on attorneys for support of civil legal services to the indigent. See Order dated March 21, 1986, In the Matter of the Creation of SCR ch. 13 and amendment of SCR 11.05 and SCR 20.50: Interest on Trust Account Program; Order 04-05, In the matter of the Petition of the Wisconsin Trust Account Foundation, Inc. for a Rule Assessing Members of the State Bar of Wisconsin for an Annual Sum to Support Organizations that Provide Civil Legal Services to the Indigent of this State, 2005 WI 35 (Mar. 24, 2005).

The petition relies on the inherent power of circuit courts to appoint counsel for indigent persons. The court has set forth the inherent power of circuit courts to appoint counsel for indigent persons in civil cases in Piper v. Popp, 167 Wis. 2d 633, 658, 482 N.W.2d 353 (1992), and Joni B. v. State, 202 Wis. 2d 1, 549 N.W.2d 411 (1996).

We decline to grant the petition and supplemental petition, which do not fit within SCR 11.02.

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.

The Wisconsin Access to Justice Commission has advised the court of its commitment to developing and implementing an Appointment of Counsel Pilot Project for indigents in one or more selected categories of civil cases involving basic human needs. Because a pilot project would necessitate circuit court participation, John Voelker, Director of State Courts, is already working with the Commission on the Pilot Project and his office will continue to assist the Commission on the Pilot Project to the extent the Director deems practicable. The court recognizes that data compiled from the project may assist the court in developing a biennial budget request to provide additional state funding to assist in funding the appointment of counsel for indigents as required by law.

Although the court denies the petition, the court reaffirms its commitment to work with attorneys, the State Bar and local bar associations, the circuit courts, clerks of circuit courts, court commissioners, court staff, the University of Wisconsin Law School,

Marquette University Law School, the public and private colleges and universities of the state, and providers of legal services to indigents to help meet the needs of low income persons for legal assistance. Pro bono initiatives to assist self-represented persons will advance our shared goal of ensuring the fair and effective administration of justice in Wisconsin.

IT IS ORDERED that the petition and supplemental petition are denied

IT IS ORDERED that notice of the entry of this order be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this ___ day of January, 2012.

BY THE COURT:

A. John Voelker
Acting Clerk of Supreme Court

