

**IN THE MATTER OF THE PETITION TO AMEND
SUPREME COURT RULE CHAPTER 31
AND CHAPTER 10.03**

**MEMORANDUM
IN SUPPORT OF
PETITION 15-_____**

INTRODUCTION

The State Bar of Wisconsin is seeking two Supreme Court rule changes to further encourage and support pro bono service by Wisconsin lawyers. The first change would amend Chapter 31 to allow lawyers to claim a limited amount CLE credit for certain pro bono legal services. The second rule change would clarify in Chapter 10 that registered in-house counsel may provide pro bono legal services when those services are provided at no charge.

DISCUSSION

1. The problem

Too many Wisconsin residents are unable to afford the legal help they need and are left with few good choices for obtaining justice when they have a civil legal problem. In its 2007 Bridging the Justice Gap report, the State Bar presented the findings from the Wisconsin Civil Legal Needs Study that documented the unmet civil legal needs experienced by low income Wisconsin residents. The results of that study showed that 45% of low income households reported experiencing at least one civil legal problem in the preceding year. Receiving help from a lawyer was a rarity: only 27% of those who had a legal problem reported that they were able to obtain help from a lawyer for at least one of the legal problems they identified.

Self-representation out of necessity rather than by choice is still the dominant feature of most family law cases in Wisconsin and most tenants receive little or no legal assistance when they face eviction. The same is true for many veterans, seniors and abuse victims when they face a civil legal problem.

Perennial underfunding of staffed legal aid agencies has meant that they have never been able to meet more than a small fraction of the legal needs experienced by individuals who qualify for their services. Volunteer attorneys are not a complete substitute for staff lawyer expertise but they are one way we can try to limit the damage caused by underfunding of our staffed programs. Volunteers are and will continue to be an important part of the system for delivery of legal services to the poor. The challenge is to recruit and support more lawyers who are willing and able to help fill the justice gap by providing pro bono legal services to low income people in Wisconsin.

Organizations that recruit and utilize volunteer lawyers have tried a wide variety of strategies over the years to recruit, retain and recognize volunteers. Many of these methods have been employed in Wisconsin, such as providing insurance and expense reimbursement for volunteers, encouraging limited scope representation, providing free or low cost training for volunteers, and the creation of pro bono recognition programs.

Increasing pro bono participation is one of the State Bar's strategic priorities. Periodic surveys conducted by the State Bar indicate that a substantial percentage of Wisconsin lawyers do some pro bono work. State Bar pro bono surveys for 2012 and 2014 began with an initial question that asks whether the lawyer has provided any pro bono legal services in the past 12 months. The percentage of attorneys responding "yes" to this question rose from 59% in 2012

to 68% in 2014. For those lawyers who provided some pro bono legal services in 2012 and 2014, the percentage who provided some free legal services to persons of limited means rose from 72% in 2012 to 82% in 2014 and the median number of hours of free legal services they reported rose from 20 hours in 2012 to 30 hours in 2014. For lawyers who reported providing some amount of reduced fee legal services to low income individuals, the median number of hours reported rose from 20 hours in 2012 to 36 hours in 2014. We have made good progress, particularly among those lawyers who are already doing pro bono work.

Still, the unmet need for legal assistance remains large and the need to recruiting more volunteers will be a major part of the strategy for our legal services delivery system for the foreseeable future. Legal services organizations report that they often have difficulty in finding enough volunteer attorneys willing to assist eligible clients. Therefore, we believe that it is important that Wisconsin use every reasonable tool at its disposal to try to broaden the pool of lawyers volunteering to do pro bono work.

2. Explanation of Proposed Amendments

a. Proposed changes to SCR Chapter 31

The State Bar of Wisconsin is proposing the following changes to Chapter 31 in connection with allowing CLE credit for pro bono:

- SCR 31.01 would be created to define “pro bono legal services” and “qualified pro bono program” for purposes of Chapter 31.
- SCR 31.05 would be created to specify that lawyers may claim 1 CLE credit for every 5 hours of pro bono legal services provided through a qualified pro bono program up to a maximum of 6 credits per 2 year reporting period.
- SCR 31.07 would be amended to broaden the purpose of CLE to include fulfilling a lawyer’s professional responsibility to provide pro bono legal services.
- SCR 31.08 would be created to require lawyers seeking CLE credit for pro bono service to provide all information required by BBE

Similar changes to allow CLE credit for pro bono have been adopted in 11 states: Arizona (Rule 45, Ariz. R. Sup. Ct.), Colorado (C.R.Civ.P. 260.8), Delaware (Delaware Rules for Continuing Legal Education, Rule 8(D)), Louisiana (Rules of Supreme Court of Louisiana, Regulation 3.21), Minnesota (Rules of the Minnesota State Board of Continuing Legal Education, Rule 6D), New York (New York State CLE Program Rules §1500.22(j)), North Dakota (North Dakota Commission for Continuing Legal Education, Policy 1.19), Ohio (Supreme Court Rules For The Government Of The Bar Of Ohio, Rule X §5(H)), Tennessee (Supreme Court Rule 21 §4.07(c)), Washington (Washington State Court Rules APR Rule 11.2(a)(4)) & Wyoming (Wyoming State Board of Continuing Legal Education Rule 5(d)). Although there is some variation among the states that permit lawyers to claim CLE credit for pro bono work, our proposal is consistent with what these other states have adopted in terms of the maximum number of pro bono credits that may be claimed in a reporting period and the amount of pro bono service that is required to earn each credit. In the states that allow lawyers to claim CLE credit for pro bono work, the amount of CLE credit that lawyers are allowed to claim for pro bono service averages out to 3 hours per year and the most common rate that is used for earning such credits is 5 hours of service for each CLE credit. To obtain the maximum benefit from this proposed rule change, a lawyer would need to provide 30 hours of qualifying pro bono legal services during a reporting period.

Recruiting new and retaining existing volunteers is a constant focus for every pro bono program. This rule change can have a positive impact on both aspects, helping to boost recruitment and retention. Allowing lawyers to claim limited CLE credit in exchange for a significant pro bono investment is a valuable incentive. The State Bar's proposal makes CLE credit for pro bono work available to all Wisconsin lawyers who must satisfy CLE reporting

requirements, which reaches a broader audience in a way that other changes might not. The proposed rule change has the potential to recruit more lawyers to engage in significant pro bono work and to help retain those who are already involved.

A rule that allows lawyers to claim some CLE credit for their pro bono work sends an important message about the value of pro bono work within the legal profession. SCR 20:6.1 sets an aspirational goal for pro bono service by Wisconsin lawyers. The same rule also encourages lawyers to provide a substantial majority of their pro bono legal services on matters that benefit persons of limited means. With that focus in mind, the State Bar's proposed rule change limits the kinds of pro bono service that can qualify for CLE credit by requiring that lawyers provide qualifying pro bono services through programs that primarily serve people of limited means.

The proposed changes to Chapter 31 would both reinforce and expand the existing goals of Wisconsin's continuing legal education requirement. Engaging in pro bono representation increases a lawyer's competence and professionalism. Every case has its unique aspects but pro bono representation of low income clients is different enough from the cases that most lawyers normally handle for their paying clients that it usually requires lawyers to learn and apply new skills or law in order to resolve the client's problem. Allowing some CLE credit for pro bono recognizes that the value of experiential learning doesn't stop in law school. Learning by doing is a lifelong feature of being a competent professional in a changing world.

Chapter 31 and its implementing rules already reflect an awareness that lawyers can meet the professional development purposes of the rules through their participation in other

activities beyond attendance at seminars. Alternative activities that already qualify for CLE credit including teaching (SCR 31.05(3)), legal writing (SCR 31.07(3)), serving on OLR district committees or as OLR special investigators (SCR 31.05(6)). Finally, SCR 31.07(2)(f) provides that the Board of Bar Examiners may grant approval of an alternative activity for an individual lawyer in situations where the attorney demonstrates that the activity increased his or her professional competence.

b. Amendments to Supreme Court Rule Chapter 10.03(4)(f)

The State Bar of Wisconsin is also proposing an amendment to SCR Chapter 10.03(4)(f) that will support pro bono service by registered in-house attorneys. The registration process for in-house counsel was created by Supreme Court order and became effective on January 1, 2009. Currently, the Wisconsin Comment to SCR 10.03(4)(f) states that “A lawyer registered under this section may provide pro bono legal services to qualified clients of a legal service program.” Our proposed amendment would strike that comment and replace it with the following in the text of SCR 10.03(4)(f): “A lawyer registered under this subsection may provide pro bono legal services without fee or expectation of fee as provided in SCR 20:6.1.” This change is also supported by the Wisconsin Chapter of the Association of Corporate Counsel.

There are approximately 300 lawyers registered under the process created by SCR 10.03(4)(f). Each of these lawyers is licensed and in good standing with the highest court of another state or a foreign jurisdiction and has provided the information required by the Board of Bar Examiners. Registered in-house lawyers agree to be subject to Wisconsin’s Code of Professional Conduct for Attorneys as part of the registration process. They may not sign

pleadings or appear in a Wisconsin court or other tribunal without first obtaining pro hac vice admission in the manner provided by SCR 10.03(4)(b) and SCR 20:5.5(d)(1).

If the court adopts the rule change that the State Bar is proposing, registered in-house counsel who volunteer their time as lawyers in this state will still be subject to Wisconsin's Code of Professional Conduct and they will still be prohibited from appearing in court or signing pleadings unless they obtain separate permission under the procedure for pro hac vice admission. This rule change would allow registered in-house counsel to provide valuable pro bono legal assistance in a variety of other ways using their often specialized legal skills. Some examples of the types of pro bono service that could be performed by registered in-house counsel include:

- advising small nonprofits or small business owners on a range of issues through projects like Marquette University Law School's Legal Initiative for Nonprofit Corporations and UW Law School's Law & Entrepreneurship Clinic;
- assisting taxpayers who have state or federal tax issues through volunteer income tax clinics that exist in a number of legal aid programs; and
- serving in basic estate planning legal clinics that exist for first responders, seniors and veterans.

Allowing registered in-house counsel to participate in a greater range of pro bono activities outside the courtroom would not increase the risk to Wisconsin consumers nor would it allow them to compete with fully admitted Wisconsin lawyers. Registered in-house counsel have the same incentives that all other lawyers have to provide high quality legal services. The in-house attorneys who would benefit from this change are already bound by Wisconsin's

professional ethics rules on competence, diligence, confidentiality, communication, and conflicts. That is an express condition of their registration. Ethical breaches could lead to discipline not just in Wisconsin but also in the other jurisdiction(s) where the lawyer is licensed. Failure to follow applicable ethics rules in their pro bono work would also jeopardize the attorney's employment. The pro bono legal services under this change must be provided without fee or expectation of a fee, so there is no danger that registered in-house counsel will compete with fully licensed Wisconsin lawyers or expand into reduced fee legal work.

CONCLUSION

Therefore, the State Bar of Wisconsin requests that the court enter an order amending Chapter 31 to allow Wisconsin lawyers to claim a limited amount of CLE credit for their pro bono service and amending Chapter 10 to clarify that registered in-house counsel may provide pro bono legal services under Rule 6.1 so long as those services are provided without fee or expectation of a fee.

Respectfully submitted this ____ day of _____, 2015.

State Bar of Wisconsin

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President