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Ex Officio

August 29, 2019

By Email and U.S. Mail

Clerk of the Supreme Court
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701

RE: Petition 19-16 to Amend Wis. Stat. Chapter 802

Dear Honorable Justices:

I am the President and Chief Executive Officer of Pro Bono Institute (PBI) and we support Petition 19-16 and respectfully request that the Court amend the Rules of Civil Procedure to eliminate the new requirement that attorneys disclose their names and bar numbers and restore ghostwriting in limited-scope representation.

PBI is a nonprofit organization that explores and identifies new approaches to and resources for the provision of legal services to the poor, disadvantaged, and other individuals or groups unable to secure legal assistance to address critical problems. We do so by supporting, enhancing, and transforming the pro bono efforts of major law firms, in-house legal departments, and public interest and legal services organizations in the U.S. and around the world. Since our founding in 1996, we have provided research, consultative services, analysis and assessment, publications, and training to a broad range of legal audiences.

We are concerned that Wisconsin may have taken a step backwards in our collective march towards access to justice for all. Ghostwriting has been an effective tool for recruiting and enabling pro bono attorneys to assist low-income individuals and communities and bringing efficiencies to the judicial system. Eliminating that option will have a depressing impact on the pool of eligible pro bono lawyers, be they emeritus lawyers, in-house lawyers, government lawyers, large law firm lawyers, or solo and small firm practitioners, who will no longer be willing to be of assistance. See, e.g., ABA Standing Committee on Pro Bono and Public Service, Supporting Justice: A Report on the Pro Bono Work of America's Lawyers, Apr. 2018 (reporting that 54.6% of attorneys surveyed in 24 states provided limited-scope representation when doing pro bono in 2017).

It is challenging to see how the elimination of ghostwriting is an advancement for the efficient administration of justice. There is no

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suggestion that the move here was the product of consideration and study or designed to promote high standards for the legal profession and to protect clients and the public from lawyer misconduct. To the contrary, we must be vigilant that ethics standards and practice rules do not have unintended chilling effects on pro bono representation. See Esther Lardent, *Do Our Ethical Rules Impair Access to Justice?*, Nat'l L.J. (May 30, 2013) (outlining ways the judicial and lawyer ethics codes can inhibit representation due to conflict of interest concerns, multi-state practice limitations, student limitations, and other reasons).

The profession's challenge is to ensure equal justice under law in every courtroom and to address the special needs of low-income individuals who are directly harmed by the nation's justice gap. To make meaningful progress, we must undertake important innovations in the manner and places in which we provide legal help to the poor. This means expanding limited-scope representation, including ghostwriting, and studying and adopting new, effective measures to assist unrepresented individuals. Low-income individuals without the resources to obtain full representation are turning to other forms of assistance. Constraints that restrict the provision of pro bono legal services to the poor in these settings must be reexamined and unnecessary restrictions should be lifted to provide greater flexibility to lawyers who want to provide some measure of legal help in such demanding circumstances.

As we struggle to expand access to justice, our rules should do more to reflect the realities of our civil legal assistance delivery systems and to remove obstacles that needlessly hinder the availability of legal services for the poor. Rules and procedures may not solve the justice gap, but they should not be part of the problem.

In sum, legal assistance and resources to boost civil justice should not be allowed to evaporate when and where they are needed most. I would be glad to provide any further information to the extent that it would be helpful in reaching a decision.

Respectfully submitted,



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