

SUPREME COURT OF WISCONSIN

No. 13-15

**In the matter of Petition to Establish Pilot
Project and Create Rule Governing Appointment
of Counsel in Civil Cases**

FILED

SEP 7, 2018

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

The above-captioned rule petition has been pending for some time as a result of interrelated events, including the extensive work of a Legislative Council Study Committee, which submitted proposed legislation during the 2017-18 legislative session. That session having concluded, the court is now prepared to address this rule petition.

On September 30, 2013, John F. Ebbott, then Executive Director of Legal Action of Wisconsin, and Thomas Cannon, then Executive Director of Legal Aid Society of Milwaukee, filed this rule petition on behalf of 19 individuals asking the court to allocate funds in the supreme court budget to plan and implement an "Appointment of Counsel Pilot Project" for indigent persons in one or more selected categories of civil cases involving basic human needs. It was anticipated that the proposed pilot project would be designed and implemented by, among others, the Wisconsin Access to Justice Commission (WATJC). The petitioners also asked the court to create a new supreme court rule that would require the court to provide counsel at public expense to certain indigent civil litigants, when

"the assistance of counsel is deemed necessary to ensure a fundamentally fair hearing in a court proceeding that will affect the litigant's basic human needs, including sustenance, shelter, heat, medical care, safety, and child custody and placement."

This petition and the requests contained therein are almost identical to a previous rule petition, 10-08, filed by the same lead petitioners. The court conducted a public hearing and, following extensive discussions, denied that rule petition by order dated February 24, 2012. See S. Ct. Order 10-08, 2012 WI 14 (issued Feb. 24, 2012).

The court discussed this petition at a December 6, 2013 open administrative rules conference and voted to informally hold the petition in abeyance pending a scheduled review of the WATJC required by SCR 14.06.

On October 9, 2014, the court received a letter from James A. Gramling, Jr., President of WATJC. The letter stated, inter alia:

If the Supreme Court decides not to fund and implement a pilot project as requested in Petition 13-15, the Commission believes the most fruitful way to advance the important goal of the petition at this time is the creation of a legislative study committee. The Commission therefore urges the Supreme Court to request the creation of a legislative study committee with the assistance of the Legislative Council and the appropriate legislative committee chairs to examine the costs, benefits, scope, and revenue options with regard to the appointment of counsel for low-income individuals in civil cases involving basic human needs when a judge determines that is necessary to assure a fundamentally fair hearing.

(Emphasis added.)

The court discussed this request at an open administrative rules conference on December 5, 2014, and agreed to ask the Legislative Council to consider convening a study committee to address the question of unmet civil legal needs of low income Wisconsin residents.¹

On January 19, 2016, the court formally requested creation of a Legislative Council study committee. In 2016, the court undertook its review of the WATJC and, by order dated July 19, 2016, issued an order continuing the WATJC. See S. Ct. Order 08-17A, 2016 WI 73 (issued July 19, 2016, eff. July 19, 2016).

On June 28, 2016, the Legislative Council announced that it had agreed to create a Legislative Council Study Committee on Access to Civil Legal Services. The Committee met from July 2016 through February 2017 and made a series of recommendations to the Joint Legislative Council. On March 13, 2017, the Joint Legislative Council, in turn, provided the legislature with the Joint Legislative Council's Report of the Study Committee on Access to Civil Legal Services.² Three bills relating to this matter were introduced during the 2017-2018 session, but at the conclusion of the session had not been adopted into law. The Legislative Council Study Committee on

¹ Justices Rebecca Grassl Bradley, Daniel Kelly and Rebecca Frank Dallet did not participate in these discussions; they had not yet joined the court when the court last formally discussed rule petition 13-15.

² See https://docs.legis.wisconsin.gov/misc/lc/study/2016/1492/070_joint_legislative_council_recommendations_to_the_2017_18_legislat ure/jlcr_2017_08.

Access to Civil Legal Service having concluded its report, the court deems it appropriate to dismiss this long pending rule petition.

IT IS ORDERED that the petition is dismissed.

Dated at Madison, Wisconsin, this 7th day of September, 2018.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

