

ADMINISTRATIVE OFFICE

230 West Wells Street, Room 800, Milwaukee, Wisconsin 53203
 www.legalaction.org | tel 414-278-7777 | fax 414-278-7156



December 16, 2011

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 CLERK OF SUPREME COURT
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Chief Justice Shirley S. Abrahamson
 Wisconsin Supreme Court
 c/o Clerk of Supreme Court
 Attn: Carrie Janto, Deputy Clerk
 P.O. Box 1688
 Madison WI 53701-1688

Re: Petition 10-08

Dear Chief Justice Abrahamson:

I have listened with interest to Justice Prosser's suggestions on ways to assist *pro se* litigants. In light of those suggestions, and of your letters of December 8, I thought it would be helpful for the Court to know what Legal Action does each year with regard to manuals for attorneys to aid them in representing indigents in civil cases, and with regard to training such attorneys.

I have enclosed three sample manuals that Legal Action has prepared for *pro bono* attorneys in the areas of Tenants' Rights, "Keeping the Family Home," and Family Law. As you can see, these manuals are quite thorough, and contain appendices with pleadings and forms which can be used by *pro bono* attorneys. These are but three of the manuals. I did not want to burden you with a huge box containing all of them. (I do not need the manuals returned, so you can feel free to circulate them to the Court, or toss them after you have seen them.)

The other manuals which we have prepared discuss:

- Consumer Law
- Collecting on Judgments
- Elder Law
- Unemployment Compensation
- Social Security Disability and SSI

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Each fall, Legal Action conducts 6 days of training for prospective *pro bono* lawyers. In 2011, the training sessions were held in Madison on November 9, 10 and 11, and in Waukesha on November 16, 17 and 18. I enclose the brochures for those sessions so that you can see the full range of poverty law areas in which training is provided to private attorneys. This training is offered free of charge, and the attorneys earn a CLE credit for each training hour. This fall, 257 attorneys attended the training. In return, each attorney signs a written agreement to provide *pro bono* legal services through our Volunteer Lawyers Project. I enclose a list of those attorneys who attended this fall's training sessions.

We have been conducting this training for around 25 years. Legal Action is required to spend 12.5% of its LSC grant on *pro bono* activities. That means that this 12.5% of our grant is not available for our staff attorneys to directly represent clients. The Legal Aid Society, Wisconsin Judicare and Disability Rights Wisconsin put on similar training events.

In 2010, private attorneys handled 781 cases of our firm total of 10,226, or 7.6%. This percentage has remained in the 5%-8% range throughout my 21 years as Executive Director of Legal Action, so I don't foresee that private attorneys will ever account for more than 10% of our cases. As a firm, we are able to serve only 12%-20% of those who need legal services, and that percentage will diminish because of our recent funding cuts.

One of the reasons that we are seeking appointed counsel in critical civil cases through Petition 10-08 is that, even with long-term efforts to encourage *pro bono* representation, along with other important efforts such as forms and self-help centers, there still remains a large "doughnut hole" in attempts to provide civil justice. That doughnut hole is the absence of publicly-funded attorney representation in critical civil cases where justice cannot be secured without it.

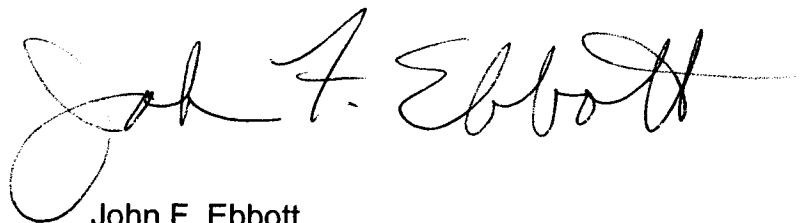
I know that the Court has a lot on its plate, and I don't want to burden you with pounds of additional material, but I did want to let the Court know that we have done this for a long time and it simply has not been nearly enough. If the Court would like more information on *pro bono* efforts in Wisconsin, I would be pleased to provide it.

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I also enclose a decision by the Montana Supreme Court, *Courturier v. Thirteenth Judicial District Court*, ordering a trial court to appoint counsel pursuant to the court's inherent authority.

Thank you for your consideration of these submissions.

Yours truly,



John F. Ebbott
Executive Director

JFE:caj
Enclosures

SSA:

CC:

Theresa Owens
Ann Zimmerman
Amanda Fessler
John Voelkel
David Hass
Julie Reich

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 11-0549

STATE, ex rel., DOMINIQUE COURTURIER,

Petitioner,

v.

ORDER

THIRTEENTH JUDICIAL DISTRICT COURT,
HON. GREGORY TODD, District Judge,Respondent.

Before this Court is a Petition for a Writ of Supervisory Control and supporting affidavit filed by the mother of an eight-year-old boy. It appears that the mother is disabled and that an action is pending in District Court to appoint a guardian for the boy who is not related to him by blood or marriage. On August 24, 2011, the District Court denied the mother's request for the appointment of counsel on the grounds that there is no statutory basis for doing so.

The mother contends that she is indigent (she receives \$606 per month in Social Security Disability benefits), that she is unable to afford counsel to represent her, and that, as a result of her disability, she suffers from impaired thinking and faulty communication skills. The mother argues that she is at risk of losing custody of and visitation with her son. The mother contends that she has no adequate remedy of appeal and that her inability to effectively participate in the guardianship proceedings implicates the loss of her fundamental right to custody of her child.

The mother argues that in parental rights termination proceedings (which this is not), the parent has a statutory right to be represented by counsel at all stages of the proceedings. Section 41-3-423, MCA. The mother argues that the proceedings at issue here carry the potential of even greater harm than if she were the subject of a dependent and neglect action. She maintains that in those proceedings, she would at least have the

benefit of being offered a treatment plan, visitation with her child, and appointed counsel to represent her. In that regard, the mother points out that in *In re J.C.*, 2008 MT 127, 343 Mont. 30, 183 P.3d 22, we held that fundamental fairness requires that a parent in a termination proceeding be represented by counsel in order to not be placed at a disadvantage and so as to have an equal opportunity to present evidence and scrutinize the State's evidence. *J.C.*, ¶ 35. The mother argues that the same standard should apply in the instant guardianship proceedings because she stands to suffer the same, if not greater, harm to her fundamental right to parent. See also *In re A.S.A.*, 258 Mont. 194, 198, 852 P.2d 127, 129 (1993) (The potential for unfairness to an indigent parent is especially likely if the parent has limited education and is unfamiliar with legal proceedings. If the parent is unrepresented by counsel at the termination proceedings, she risks losing her child due to intimidation, inarticulateness or confusion.). Mother contends that, unlike the petitioner in *In re Kessler*, 2011 MT 54, 359 Mont. 419, 251 P.3d 147, she has requested counsel, she has no advisory counsel or guardian ad litem, and she has virtually no disposable income with which to hire an attorney.

We agree with the District Court that there is no statute authorizing the court to appoint counsel under the circumstances here. Notwithstanding this lack of statutory authority, however, we conclude that the District Court has the inherent authority to appoint pro bono counsel in appropriate cases.

Having no response from the Respondent (although we twice ordered one), we will assume as true the particular harms set out in the mother's petition. Those harms include potential impact on mother's parent-child relationship; mother's inability to competently appear on her own behalf; and mother's lack of resources to secure the services of an attorney. Under M. R. Civ. P. 4.1, limited representation may be appropriate as determined by counsel after appointment. Therefore,

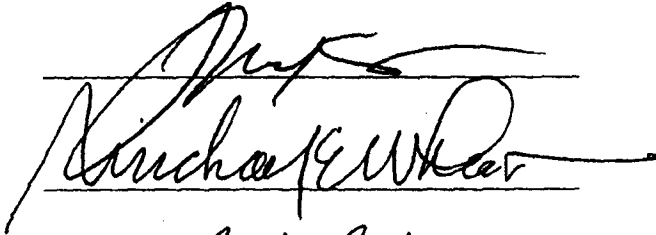
IT IS ORDERED that pro bono counsel shall be appointed for the mother in the underlying proceedings, Yellowstone County Cause No. DG 2011-0063.

The Clerk of this Court is directed to give notice of this Order to all counsel of record and to the Hon. Gregory R. Todd, District Judge, Presiding.

Dated this 6th day of December, 2011.



Chief Justice



Nicholas Wheeler



Peter Baker



Jim Rice



Patricia Cotter



Justices