

SUPREME COURT OF WISCONSIN

No. 17-09, 08-17

In the matter of petition for amendment
to Supreme Court Rule 10.03(4)(b)2
relating to pro hac vice applications

FILED

MAR 28, 2018

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

On September 28, 2017, Attorney James A. Gramling Jr., President, Wisconsin Access to Justice Commission (Commission), filed a rule petition on behalf of the Commission. The petition asks this court to amend Supreme Court Rule (SCR) 10.03(4)(b)2, the "pro hac vice" rule, to increase the fee for admission pro hac vice from \$250 to \$300, and to allocate the \$50 increase to the Commission.¹

At a closed administrative conference on December 4, 2017, the court voted to solicit written comments and discuss the matter at a future conference. On December 6, 2017, a letter was sent to

¹ Pursuant to the terms of the "pro hac vice" rule, SCR 10.03(4)(b), a court or judge in this state may allow nonresident counsel to appear and participate in a particular action or proceeding in association with an active member of the state bar of Wisconsin who appears and participates in the action or proceeding. A fee (\$50) and an application for admission pro hac vice were first imposed in 2009. See S. Ct. Order 06-06, 2008 WI 109 (issued July 30, 2008, eff. Jan. 1, 2009). The initial fee was payable to the Office of Lawyer Regulation (OLR). Fees received by the OLR are remitted to the general fund and are used for the general operating requirements of the lawyer regulation system.

interested persons seeking input. The court received a number of comments in support of the petition.² The court also received a comment from the Menominee Indian Tribe of Wisconsin, by Attorneys Starlyn R. Tourtillott and Danica J. Zawieja, asking the court to create an exception to the pro hac vice rule for nonresident tribal counsel in cases brought pursuant to the federal Indian Child Welfare Act, 25 U.S.C. § 1911 et seq. (ICWA), codified in Wisconsin as the Wisconsin Indian Child Welfare Act (WICWA). Several interested persons wrote in support of this suggestion.³

² The court received comments in support of the petition from: Paul G. Swanson, President, State Bar of Wisconsin; Margaret Raymond, Dean, University of Wisconsin Law School; Melissa Dalkert, President, Portage County Legal Aid Society, Inc.; Kevin J. Palmersheim, President, Wisconsin Trust Account Foundation; Robert A. Peterson, Jr., Executive Director, ABC for Health, Inc.; Mike Gonring, Executive Director, Legal Aid Society of Milwaukee; Kimberly Haas, Executive Director, Wisconsin Judicare, Inc.; Patti Seger, Executive Director, End Domestic Abuse; David Pifer, Executive Director, Legal Action of Wisconsin; Nicole J. Renouard, Executive Director, Centro Legal; and Daniel Idzikowski, Executive Director, Disability Rights Wisconsin.

³ The court received several comments in support of an exception for nonresident counsel in ICWA/WICWA cases. Some also noted support for the proposed fee increase. The court received comments from: Nicole M. Homer, Ho-Chunk Nation Department of Justice; Sarah Stahelin, Tribal Attorney, Leech Lake Band of Ojibwe (also supporting the fee increase); Kathryn E. Fort, Director, Indian Law Clinic, Michigan State University; Angelica Ramirez, Assistant General Counsel, St. Croix Chippewa Indians of Wisconsin (also supporting the fee increase); Amanda L. WhiteEagle, Attorney General, Ho-Chunk Nation; and Eugene L. White-Fish, President, Wisconsin Tribal Judges Association (noting general support for funding the Commission).

On February 5, 2018, the Commission filed a response to all the comments and endorsed the proposed exception for nonresident counsel in ICWA/WICWA cases.

The court discussed this petition extensively at a closed conference on February 22, 2018.

The petition asks the court to raise the pro hac vice fee from \$250 to \$300 and to allocate the proposed \$50 fee increase to the Commission. The court ultimately voted to deny the petition.⁴

We recognize the Commission's funding situation is precarious. Indeed, since its inception, funding has been a critical concern for the Commission.⁵ In the 2008 rule petition asking this court to create the Commission, the State Bar offered to fund the Commission for three years, drawing the funds from a reserve fund established to support access to justice initiatives. See Petition for Creation of Access to Justice Commission, at 8, (July 7, 2008), <https://www.wicourts.gov/srules/0817.htm>. The order creating the Commission reflected the initial funding commitment, stating: "In accordance with the offer of the State bar, the Commission shall be

⁴ The court has directed its staff to contact the Menominee Indian Tribe of Wisconsin and advise counsel that they may file an independent rule petition asking the court to create the requested exception to the pro hac vice rule for nonresident tribal counsel in cases brought pursuant to the federal Indian Child Welfare Act.

⁵ We created the Commission by order dated June 5, 2009. See S. Ct. Order 08-17, 2009 WI 42 (issued June 5, 2009, eff. June 5, 2009).

funded and staffed by the State bar for at least three years." SCR 14.04. The State Bar envisioned that "[w]hen the Commission is fully operational it should be funded by contributions from the Legislature, the Court and the State bar." See Petition for Creation of Access to Justice Commission at 8.

Since its implementation, the court has monitored the Commission's efforts and its funding. In 2014, we agreed to a request to increase the fee imposed on out-of-state lawyers seeking admission pro hac vice and allocated a portion of that fee increase to the Commission. See S. Ct. Order 13-11, 2014 WI 42 (issued June 20, 2014, eff. July 1, 2014).⁶ With this action we generated approximately \$30,000 in annual revenue for the Commission.

In January 2016, at the Commission's request, the court unanimously asked the Wisconsin Legislative Council to create a committee to study access to legal services in civil matters.⁷ The Wisconsin Legislative Council agreed, forming the 2016 Joint Legislative Council Study Committee on Access to Civil Legal Services (Study Committee), tasked with reviewing the need for legal services

⁶ Pursuant to that order, we raised the fee from \$50 to \$250 and distributed the fees as follows: \$100 to the OLR, \$100 to Wisconsin Trust Account Foundation, Inc., (WisTAF) and \$50 to the Commission. Fees received by WisTAF and the Commission support those programs which seek to improve access to civil legal services for unrepresented low-income Wisconsin residents.

⁷ See <http://wisatj.org/wp-content/uploads/SCT-Access-to-Justice-Letter.pdf>.

by indigent civil litigants; identifying additional non-GPR ("general purpose revenue") sources of revenue to provide civil legal services for the indigent; and reviewing current operations.

Also in 2016, we undertook a formal review of the Commission, as required by court rule, and voted to continue the Commission. See S. Ct. Order 08-17A, 2016 WI 73 (issued July 19, 2016). As the concurrence to this order observed, however, our order was silent about funding; the Commission has been unable to establish a stable, annual source of funding sufficient to meet its current budget.

In February 2017, the Wisconsin Legislative Council voted to accept the Study Committee's detailed report and recommendations, which included proposed legislation, intended to foster certain specific access to justice initiatives, but did not recommend a general allocation of funds for civil legal services. See Joint Legislative Council's Report of the Study Committee on Access to Civil Legal Services, at 10 (March 13, 2017), https://docs.legis.wisconsin.gov/misc/lc/study/2016/1492/070_joint_legislative_council_recommendations_to_the_2017_18_legislature/jlcr_2017_08.

The Commission has explained that its current budget anticipates revenue from three sources: a grant from the State Bar's Family Law Section (\$5,000), an in-kind contribution from the State Bar (\$20,000), and pro hac vice fees (\$30,000). The Commission's expenses are approximately \$66,564, leaving a projected deficit. The

Commission emphasizes that it has pared down its budget significantly, and many members of the Commission forgo submitting expense reimbursement requests.

The court remains deeply concerned about the extensive, unmet need in Wisconsin for greater attorney representation for low-income residents in civil cases when human needs are at stake. We ultimately determined however, that we will not approve the Commission's request for another increase in the pro hac vice fee. In so deciding, several members of the court emphasize that it is the fee increase that is opposed, not the Commission. Rather, the court concludes that it is time to consider other ways to further the important mission of the Commission, which is to "develop and encourage means of expanding access to the civil justice system for unrepresented low income Wisconsin residents." SCR 14.02(2). This may entail restructuring the Commission to better enable it to effectively advance these critically important objectives. The court welcomes input from the dedicated members of the Commission who know, firsthand, the challenges inherent in the task we have assigned them.

Our rules provide that we meet with the members of the Commission annually. SCR 14.05. Our next meeting is scheduled in April 2018. We look forward to a productive discussion with the members of the Commission about how to advance our shared goal of improving the administration of justice by supporting civil legal services for those who need but cannot afford them.

Therefore,

IT IS ORDERED that the petition is denied.

Dated at Madison, Wisconsin, this 28th day of March, 2018.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, J. (*dissenting*). The court denies the petition for financial support to the Wisconsin Access to Justice Commission. In the same breath as the denial, the court professes its support for the Wisconsin Access to Justice Commission and its deep concern about Wisconsin's extensive, unmet need for legal representation for low-income residents in civil cases when human needs are at stake. The court's order promises that "productive discussion" will follow.

¶2 Talk, talk, talk! No action!

¶3 The court also denies the request of the Menominee Indian Tribe of Wisconsin that the court direct that the pro hac vice rule not apply for nonresidential tribal counsel in cases brought pursuant to the federal Indian Child Welfare Act, codified in Wisconsin as the Wisconsin Indian Child Welfare Act (WICWA). In denying the Tribe's request, the court directs court staff to advise the Tribe that it may draft another petition submitting this request to the court once again.⁸ Why can't the court grant the request now? Why demand another petition?

¶4 Here is what I propose:

1. The court should hold a public hearing on the petition in April 2018 before its meeting with the Wisconsin Access to Justice Commission. Many are working for improved access to justice. They should be given an opportunity to offer concrete

⁸ See note 4 of the order.

suggestions to the court and the Commission for ways in which the court and Commission can help ensure equal justice for all, including funding of the Commission. An order on the petition would be issued on or before June 30, 2018.

2. The court should immediately grant the request of the Menominee Indian Tribe of Wisconsin that the court create an exception to the pro hac vice rule for nonresident tribal counsel in cases brought pursuant to the federal Indian Child Welfare Act, codified as the Wisconsin Indian Child Welfare Act (WICWA). The Wisconsin Access to Justice Commission (and many others) supports this request.

The court should therefore issue an order immediately directing circuit courts to allow nonresident tribal counsel to appear in WICWA cases.

Just denying the petition and directing court staff to advise the Tribe that it may file yet another rule petition and undertake yet another lengthy rule petition process to accomplish its goal (a process that may not end until sometime in 2019, if then) is, in my opinion, unacceptable. Native American children should get timely justice without further delay.

¶5 For these reasons, I dissent.

¶6 I am authorized to state that Justice ANN WALSH BRADLEY joins this dissenting opinion.

¶1 ANNETTE KINGSLAND ZIEGLER, J. (*dissenting*). I respectfully dissent. I would grant the petition filed by the Wisconsin Access to Justice Commission ("Commission") and raise the fee for admission pro hac vice in Wisconsin from \$250 to \$300, allocating the additional \$50 to the Commission. These additional funds are needed if the Commission is to continue its work supporting access to civil legal services for those who cannot afford them.

¶2 I would also grant the unopposed request of the Menominee Tribe of Wisconsin and amend SCR 10.03(4) to exempt out-of-state lawyers representing Indian tribes in ICWA/WICWA cases from the requirements of the pro hac vice rule. As an alternative, I would support a public hearing on this matter.

¶3 For the foregoing reasons, I respectfully dissent.

¶4 I am authorized to state that Justice ANN WALSH BRADLEY joins this dissent.

