

STATE OF WISCONSIN  
SUPREME COURT

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In re:

PROPOSED AMENDMENT TO  
WIS. STAT. § 803.08 ALLOCATING A  
PORTION OF UNCLAIMED CLASS  
ACTION AWARDS TO SUPPORT THE  
PROVISION OF LEGAL SERVICES TO  
LOW-INCOME AND INDIGENT  
PERSONS

RECEIVED  
OCT 09 2015  
CLERK OF SUPREME COURT  
OF WISCONSIN

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**PETITION OF WISCONSIN ACCESS TO JUSTICE COMMISSION  
FOR AN ORDER AMENDING  
WIS. STAT. § 803.08**

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Petitioner Wisconsin Access to Justice Commission (WATJ), pursuant to Wis. Stat. § 751.12, hereby petitions the Court as follows:

1. In its landmark 2007 study, *Bridging the Justice Gap: Wisconsin's Unmet Legal Needs*, the State Bar of Wisconsin found that more than 500,000 of the state's residents face serious civil legal problems without the assistance of an attorney or other legal professional. These include the elderly, veterans, children, disabled citizens, low-wage workers and the unemployed.
2. In part spurred by the State Bar study, WATJ was created by this Court in 2009 to advocate for and support the provision of civil legal services to low-income Wisconsin residents.
3. From its inception, WATJ has recognized that stable funding from both public and private sources is vital to achieving its mission. The WATJ Mission Statement commits to seeking "increased funding from a range of sources" in order to "create and sustain a statewide

civil legal aid delivery system that is comprehensive, integrated, efficient, accessible, and fair in achieving just outcomes.”

4. Unfortunately, far from increasing funding to provide legal services for low-income residents, Wisconsin has gone in the opposite direction. In 2011, Wisconsin ended all state funding for indigent civil legal services.

5. In 2013, WATJ coordinated with the State Bar of Wisconsin and others seeking to restore funding for civil legal aid in the FY 2013-2015 state biennial budget. Notwithstanding these efforts, the legislature failed to restore any funding for civil legal services. Nor was funding restored in the most recent FY 2015-2017 budget despite similar efforts.

6. Wisconsin is now one of the only three states that provide no funding for civil legal services to low-income individuals. Wisconsin’s neighboring Midwestern states budget an average of \$7.6 million a year for civil legal aid to the poor.

7. With the elimination of state funding, and the reduction of funding from other sources such as IOLTA, total funding for civil legal services to the poor has dropped from almost \$9 million in 2010 to about \$5.5 million in 2013.

8. In 2012 WATJ held a series of public hearings across the state to assess the need for civil legal assistance to low-income residents. The fundamental theme that emerged from those hearings was that, even while funding is decreasing, the need for low-income legal services is increasing, particularly in proceedings involving domestic violence and child abuse, eviction and other landlord/tenant issues, foreclosures, family law, and government benefits programs.

9. This Court has “acknowledged the importance of supporting programs that improve access to civil legal services for unrepresented low-income Wisconsin residents.” *In the Matter of the Petition for Amendment to Supreme Court Rule 10.03(4)(b)2 Relating to Pro Hac*

*Vice Applications*, No. 13-11 (2014). To that end, in 2014 the Court approved a rule allocating a portion of the fees paid in connection with *pro hac vice* admissions to help support the provision of legal services to low-income and indigent persons. *Id.*

10. It is expected that the allocation of *pro hac vice* fees pursuant to the Court's rule change will raise somewhere in the neighborhood of \$80,000 a year for low-income legal services. While any additional funding is helpful, the amount that will be realized from the *pro hac vice* fees does not come close to closing the deficit caused by the Legislature's defunding.

11. Another potential source of funding for low-income legal services is to require that some portion of the residual funds from class action settlements or awards be earmarked for that purpose.

12. Although the use of so-called cy pres awards has not been addressed by this Court, the United States Court of Appeals for the Seventh Circuit and federal lower courts under its jurisdiction have held that often "the cy pres remedy may be the only one that makes sense. . ." *Hughes v. Kore of Indiana Enterprise Inc.*, 731 F.3d 672, 678 (7th Cir. 2009); *see also Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 345 (7th Cir. 1997) ("Cy pres recovery is thus ideal for circumstances in which it is difficult or impossible to identify the persons to whom damages should be assigned or distributed."); *McKinnie v. JP Morgan Chase Bank N.A.*, 678 F.Supp. 2d 806, 813 (E.D. Wis. 2009) (Cy pres awards are "proper and acceptable in class action settlements, particularly when locating and ascertaining the status of all individual class members is prohibitively difficult or expensive."); *In re Mexican Money Transfer Litigation*, 164 F.Supp. 2d 1002, 1031 (N.D. Ill. 2000) ("The Seventh Circuit and other courts have recognized that cy pres contributions are proper and often are part of class action settlements.").

13. Prior efforts to educate and encourage Wisconsin attorneys to voluntarily designate legal service providers as cy pres beneficiaries have met with limited success. It is Petitioner's belief that in order to generate the sought-after level of funding, the designation of legal services providers as cy pres beneficiaries needs to be mandatory.

14. According to a survey conducted by the ABA Resource Center for Access to Justice Initiatives, at least 14 states have made amendments to their rules of civil procedure permitting or requiring that some or all of residual class action funds revert to legal services providers to low-income residents. Some of these initiatives have resulted in substantial payments to the designated beneficiaries.

WHEREFORE, Petitioner requests that current Wis. Stat. § 803.08 be designated as subsection (a), and that subsection (b) be created as follows:

(b) Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees and other court-approved disbursements. This rule does not prohibit the trial court from approving a settlement that does not create residual funds.

(2) "WisTAF" means the Wisconsin Trust Account Foundation, Inc.

(3) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for disbursement of any residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than fifty percent (50%) of the residual funds shall be disbursed to WisTAF to support activities and programs that promote access to the Wisconsin civil justice system. The court may disburse the balance of any residual funds beyond the minimum percentage to WisTAF for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

Respectfully submitted this 9<sup>th</sup> day of October, 2015.

WISCONSIN ACCESS TO JUSTICE  
COMMISSION

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