
**In the matter of amending Supreme Court Rule 31.01(11)
pertaining to continuing legal education and pro bono
legal services**

**SUPPORTING
MEMORANDUM
PETITION 21- 08**

The Honorable Robert J. Collins, II of the Oneida Judiciary respectfully petitions the Wisconsin Supreme Court to amend SCR Chapter 31 regarding continuing legal education and pro bono legal services.

I. Procedural history.

On September 7, 2021, I contacted the Wisconsin Board of Bar Examiners and, in accordance with SCR 31.01(12)(d), requested that the Board approve the Oneida Judiciary's guardian ad litem program as a qualified pro bono program. The Oneida Judiciary compensates guardians ad litem for their work; however, the parties to a case are ordered to reimburse the court for the guardian ad litem fee. This creates a potential hardship as many litigants are indigent. As some of the guardians ad litem who are approved to practice in the Oneida Judiciary are attorneys licensed by the State of Wisconsin, it would benefit the community to give guardians ad litem the option to claim continuing legal education credits for the direct legal services they provide to persons of limited means in lieu of submitting an invoice for payment.

On September 22, 2021, the Executive Director and General Counsel of the Board of Bar Examiners, Attorney Jacquelynn B. Rothstein, replied to my request. The Chair of the Board of Bar Examiners and Attorney Rothstein reviewed the request and concluded it did not meet the criteria for a qualified pro bono program as contemplated under SCR 31.01(11).¹

On October 22, 2021, I discussed my request to the Board of Bar Examiners at the Wisconsin Tribal Judges Association annual meeting. After speaking with the other tribal court judges, it was determined that allowing tribal court guardians ad litem that have a law license to

¹ The letter from Attorney Rothstein stated that “[a]s we understood the proposal, attorneys appointed by the Oneida Judiciary to serve as guardians ad litem would have the option of seeking reimbursement for their services or, alternatively, could waive their fees. Because such appointments are not specifically included under SCR 31.01 (11) and because some appointments would still result in attorneys being paid for their services, this is not considered a ‘qualified pro bono program,’ and your request for approval was therefore denied.”

receive continuing legal education credits in lieu of monetary payments, if approved by the tribal court, would benefit tribal communities and potentially reduce the impact on already strained tribal court budgets. After the meeting, the Ho-Chunk Nation Judiciary, Lac Courte Oreilles Tribal Court, and Lac du Flambeau Tribal Court contacted me in support of the proposal.

II. Amend SCR 31.01(11) to allow for tribal courts to make appointments for pro bono legal services.

Under current Supreme Court Rule, a state or federal court may appoint someone to provide pro bono legal services to persons of limited means. Once the appointment is made, the attorney may claim one hour of Wisconsin continuing legal education credit for every five hours of pro bono legal services provided in accordance with SCR 31.05(7). It would be beneficial to tribal courts and the communities they serve to include appointments made by tribal courts in the Supreme Court Rule. I recommend adding tribal courts to SCR 31.01(11).

SCR 31.01(11) "Pro Bono legal services" means direct legal services provided without fee or expectation of fee to persons of limited means through a qualified pro bono program or pursuant to an appointment by a ~~state or federal court~~ state, federal, or tribal court.

III. Procedural and substantive rights.

The petition would not affect any person's procedural or substantive rights.

IV. Fiscal and administrative impacts.

The petition, if granted, would allow tribal courts to appoint attorneys to provide pro bono legal services, which would permit the attorney to claim continuing legal education credits in lieu of monetary payments. This would potentially reduce the impact on already strained tribal court budgets.

The potential administrative impact of the petition should be minimal. Pro bono continuing legal education credits may currently be awarded pursuant to an appointment by a state or federal court. The petition would allow tribal courts to make appointments as well.

V. Related petitions.

There are no related petitions pending before the Wisconsin Supreme Court.

VI. Consultation

The committees, agencies, and individuals that I have consulted with about this proposal include the following: Wisconsin Tribal Judges Association, Chief Judge Jo Deen B. Lowe (Ho-

Chunk Nation Judiciary), Chief Judge Elaine H. Smith (Lac Courte Oreilles Tribal Court), Chief Judge Garold Smith (Lac du Flambeau Tribal Court), Chief Judge Layatalati Hill (Oneida Judiciary), Attorney James R. Bittorf (Oneida Law Office), and Attorney Jacquelynn B. Rothstein (Board of Bar Examiners).

VII. Conclusion.

I respectfully petition the Wisconsin Supreme Court to adopt the above amendment to improve SCR 31 as it pertains to continuing legal education and pro bono legal services.

Respectfully submitted this _____ day of December 2021.

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