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CLERK OF SUPREME COURT
 OF WISCONSIN

Wisconsin Supreme Court Justices
 Wisconsin Supreme Court
 16 E. State Capitol
 Madison WI 53702-0001

Re: Petition 10-08

Honorable Justices:

The petitioners submit this in response to Justice Roggensack's suggestion that the Court consider a pilot project wherein trial courts would exercise their discretion to appoint counsel in one or two types of judicial proceedings which affect basic human needs. We believe that statewide proceedings involving domestic violence and the Milwaukee County Children's Court appointment system are amenable to "pilot project" evaluation.

Three kinds of domestic violence proceedings could be involved: 1) domestic violence injunctions; 2) divorce actions with custody issues involving domestic violence; and 3) paternity actions with custody issues involving domestic violence. Trial courts statewide would be directed by this Court to exercise their discretion to appoint pursuant to their constitutional inherent power to appoint and pursuant to the due process requirement that fundamental fairness be provided on a case-by-case basis.

The criteria set forth in the first paragraph of the petitioned-for rule are satisfied because domestic violence proceedings involve legal rights which affect health, safety, child custody, and often sustenance. The trial courts would use the factors in the second paragraph of the petition when exercising their discretion as to whether counsel is necessary. There would be two exceptions to this: 1) In all domestic violence injunction petitions where the abuser is represented by counsel, the court would appoint counsel for an unrepresented victim; 2) in all domestic violence injunctions where the petitioner is incapable of articulating her claims because of a mental health problem, a language barrier, her distraught state, or some other reason, the court would appoint counsel for the petitioner, and for an unrepresented respondent if the judge determines that fairness so requires.

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Each county would pay, as a court operating cost, the cost of the appointment of counsel in that county. Spread out across 72 counties, this should not be an overwhelming burden for any single county. This county payment protects the court's status as a strong and independent branch of government, and is required pursuant to the law established by a long line of cases from *In re Janitor* down through *Barland*, including *State v. Lehman*, and by Wis. Stat. §753.19.

As hearing testimony showed, Milwaukee County Children's Court judges have been appointing attorneys for parents in CHIPS cases for years. This is, in effect, an ongoing "pilot project" regarding which costs and benefits can be evaluated.

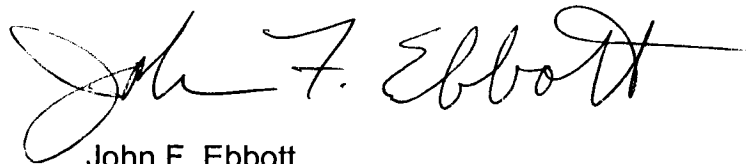
Three benefits can be realized from both elements of this pilot project:

1. DV Victims and CHIPS parents will receive justice and will be helped, and that help can be evaluated.
2. The Court can track how many appointments may be necessary.
3. The cost of appointing counsel, its cost-avoidance value and its securing of other financial benefits can be evaluated.

There is a state constitutional power inherent in the Courts to appoint counsel where that assists them in the due administration of justice, "including assuring litigants a fair trial." *State v. Holmes*. There is also a due process right to a fundamentally fair proceeding which belongs to each litigant. Conducting a pilot project to evaluate the costs, benefits and practical workings of the exercise of this inherent power and the accordance of this fundamental fairness does not undermine either; rather, it shores them up and makes justice real rather than illusory.

We hope that the Court finds these suggestions helpful.

Yours truly,

A handwritten signature in black ink, appearing to read "John F. Ebbott". The signature is fluid and cursive, with a large initial "J" and "E".

John F. Ebbott
On Behalf of the Petitioners for
Rule Petition 10-08