

SUPREME COURT OF WISCONSIN

PETITION TO ESTABLISH A RULE
GUIDING COURTS IN THE EXERCISE
OF THEIR INHERENT POWER TO APPOINT
COUNSEL IN CIVIL CASES AND
APPOINTMENT OF COUNSEL PILOT PROJECT FOR
INDIGENT LITIGANTS

The undersigned petitioners hereby petition this Court as follows:

WHEREAS:

1. Wisconsin citizens who are required to participate in court proceedings to resolve issues involving their legal rights have existing constitutional rights to fundamental fairness and the equal protection of the law.
2. The United States and Wisconsin Constitutions impose an existing duty on Wisconsin trial courts to appoint counsel where appointment is essential to fundamental fairness.
3. A conclusion that there is no absolute, categorical constitutional right to appointed counsel in each and every civil case is not the end of the matter; civil litigants still have a due process right to procedures which provide an opportunity to be heard at a meaningful time and in a meaningful manner. *Piper v. Popp*, 167 Wis. 2d 633, 482 N.W.2d 353 (1992).

4. Circuit Courts possess the inherent power to appoint counsel for the representation of indigents in civil cases. *Piper v. Popp, supra; Joni B. v. State*, 202 Wis. 2d 1, 549 N.W. 2d 411 (1996).

5. An indigent civil litigant is entitled to an individualized determination of the constitutional necessity of appointed counsel in her case. *Piper v. Popp, supra*.

6. A court must determine on a case-by-case basis whether to appoint counsel by weighing the three *Mathews v. Eldridge* elements against the presumption against appointed counsel. If the *Mathews v. Eldridge* due process elements suffice to rebut the presumption against appointed counsel, then due process requires the appointment of counsel. *Piper v. Popp, supra*.

7. The three *Mathews v. Eldridge* elements which the trial court must evaluate in deciding whether counsel must be appointed are:

- a. The private interests at stake;
- b. The risk that the procedure used will lead to erroneous decisions;
and
- c. The government=s interest at stake.

Piper v. Popp, supra; Joni B. v. State, supra.

8. The foregoing is an existing constitutional requirement, not an inchoate right which can be avoided.

9. *Piper v. Popp* was a unanimous decision of this Court.
10. The Fourteenth Amendment bars a state from denying any person a fundamentally fair trial. *Joni B. v. State, supra*.
11. Trial courts must determine on a case-by-case basis whether due process necessitates appointment of counsel. *Joni B. v. State, supra*.
12. In each case, the Circuit Court must determine what constitutes a meaningful opportunity to be heard and whether that requires appointment of counsel in the particular instance. *Joni B. v. State, supra*, citing *Piper v. Popp, supra*.
13. In *Joni B.*, this Court affirmed its holding in *Piper* that the test to be applied by Circuit Courts is to first balance the *Mathews v. Eldridge* due process elements against each other, then balance the net weight of these elements against the presumption that a right to counsel exists only when personal freedom is jeopardized. *Joni B., supra* at 13.
14. This Court in *Joni B.* suggested to Wisconsin trial courts that, when the trial court either grants or denies a request for counsel, it should memorialize its findings and rationale on the record to facilitate appellate review. *Id.* at 18.
15. *Joni B.* was a unanimous decision of this Court.
16. This Court's Order in Petition 10-08 stated, with regard to *Piper* and *Joni B.*: AOur decision regarding this petition does not undermine the holdings of these cases.@

17. When a party requests counsel Aor when the circumstances otherwise raise a reasonable concern that the [party] will not be able to provide meaningful self-representation, the court *must exercise* the discretion conferred by *Joni B.* whether to appoint counsel.@ *In the Interest of Xena X. D.-C. v. Tammy L.D.*, 2000 WI App. 200, &32, (2000). [Emphasis supplied.]

18. Few trial courts are making these constitutionally-required determinations as to whether they are conducting fundamentally fair trials.

19. *Piper* and *Joni B.* are honored mainly in the breach.

20. The Wisconsin Constitution provides, in its Declaration of Rights, in Article I, Section 21(2):

In any court of this state, any suitor may prosecute or defend his suit either in his own proper person or by an attorney of the suitor=s choice.

21. The Wisconsin Constitution provides, in its Declaration of Rights, in Article I, Section 1:

All people are born free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

22. Article I, Section 1 is Wisconsin's Equal Protection Clause. It is violated when an indigent litigant is denied the right guaranteed in Article I, Section 21(2) to prosecute or defend his or her suit by an attorney when that attorney is essential to a fair trial.

23. Indigent Wisconsin litigants are routinely denied this right, and thus are routinely denied the equal protection of the law.

24. Three years ago, on September 30, 2010, in an attempt to take a small step to remedy these unconstitutional deprivations, several of the petitioners below were among 1,320 Wisconsin residents who signed and filed Petition 10B08.

25. Petition 10-08 requested that this Court promulgate a rule which would set forth the circumstances in which trial courts should provide counsel at public expense for civil litigants. This would have provided Supreme Court permission to appoint counsel, as well as much-needed guidance, to Wisconsin trial courts.

26. Petition 10-08 has remained posted on the www.wisgideon.org website and, with no solicitation from the instant petitioners, has attracted 102 additional signers.

27. The supporters of Petition 10-08 now number 1,422, an indication that the problems caused by lack of counsel have not faded away.

28. On October 4, 2011, this Court held a day-long hearing on Petition 10-08. In addition to several written submissions in support of the petition, 23 out of 26 speakers appeared in person to support the petition. Only 3 speakers opposed the petition, and the single point of opposition focused on cost, not on the need for or value of providing legal

services for the indigent in civil cases.

29. There was more public interest in this petition than in any other petition, save the unauthorized practice of law petition, which restricts access to the courts.

30. The testimony of the 23 persons in support of Petition 10-08 was prepared with care and delivered with passion, was thoughtful and comprehensive, and described from a great many perspectives the critical need for appointment of counsel to ensure fundamentally fair hearings.

31. On October 4, 2011, the Court heard from court commissioners; Circuit Court judges; a Municipal Court judge; the Scholar in Residence at the Western Center on Law and Poverty in California who is one of the pioneers of civil legal services; Executive Directors of civil legal services law firms; a Past President of the American Bar Association; an attorney from the Public Justice Center; a Past President of the State Bar of Wisconsin; the President of the Wisconsin Equal Justice Fund; an attorney with a large private law firm in Green Bay; the former Milwaukee County District Attorney; a pastor who serves poor people in Milwaukee; the director of the food pantry at Shalom Center Interfaith Network in Kenosha; two staff members at major anti-domestic violence organizations; a staff attorney with a disability rights organization; a member of the Supreme Court-established Wisconsin Access to Justice Commission; a low-income person; and the President of the State Bar of Wisconsin. All of these speakers testified

in support of the petition.

32. This testimony is as relevant and compelling today as it was two years ago, and the Court=s decision on the instant petition can be based in part on the October 4, 2011 record. Therefore, we have attached the WisconsinEye DVD of that October 4 hearing to this petition, we incorporate it by reference into this petition, and we ask this Court to view the DVD as part of its consideration of the instant petition.

33. Following the October 4, 2011 hearing, this Court held three open administrative conferences to discuss and decide Petition 10-08:

October 17, 2011

December 5, 2011

January 19, 2012

34. During the course of those administrative conferences, a number of alternative courses of action were suggested, including:

- a. Judicial education as to the inherent power to appoint counsel;
- b. The inclusion of guidance for judges as to the meaning of *Piper* and *Joni B.* in the Civil Benchbook, Jury Instructions or Special Materials;
- c. The court system=s keeping statistics, through CCAP or otherwise, of the number of attorney appointments made by the Circuit Courts;
- d. The awarding of CLE credits for *pro bono* representation;

- e. A pilot program supported by the Court=s budget;
- f. A pilot program designed and implemented by the Wisconsin Access to Justice Commission.

35. *Judicial Education*: With regard to judicial education, in 2012 there were sessions at various judicial conferences devoted to educating judges about their inherent power to appoint counsel, including a plenary session at the state judicial conference. However, that level of judicial education has not continued into 2013 and, we believe, is not planned for 2014 and subsequent years. Thus, there is no sustained and comprehensive educational effort whose effect will be to meaningfully increase fundamental fairness through the appointment of counsel.

36. *Bench Book Jury Instructions and Special Materials*: The Wisconsin Judicial Benchbooks, Volume IIA, Civil, at CV 43-10, contains three points on the right to counsel in contempt actions, and cites *State v. Pultz*, 206 Wis. 2d 112 (1996). It also states, in the *Prisoner Litigation* section: ANo constitutional right to appointment of counsel in tort action,@ citing *Piper v. Popp*. As set forth above, this is not exactly what *Piper* held. Other than this, there is no guidance as to when fundamental fairness requires the appointment of counsel, nor is there any discussion of *Piper*, *Joni B.*, or *Xena X. D.-C.*

A search of the *Table of Cases Cited* in the Wisconsin Jury Instructions-Civil shows no entry for *Piper*, *Joni B.* or *Xena X. D.-C.*

We have been given to understand that a proposed addition to Civil Benchbook CV 5 has been submitted, which addition includes *Xena X. D.C. (Tammy L.D.), Piper* and *Joni B.*, but that it is at present not in the Benchbook.

37. *Maintaining statistics on the number of court appointments:* We have been informed by the Office of the Director of State Courts that that office does not record and maintain data as to the number of court appointments of counsel in civil cases.

38. *CLE Credits for Pro Bono Representation:* In the autumn of 2007, the State Bar=s Legal Assistance Committee (LAC) began working on a rule change which would provide CLE credit for *pro bono* representation. During the ensuing 6 years, the proposed rule went through various iterations and presentations to the Board of Bar Examiners (BBE) and the State Bar=s Executive Committee, but no petition has ever been filed with this Court. The most recent memorandum was sent by the LAC to the State Bar Board of Governors (BOG) on August 15, 2013. This memorandum requested that the State Bar petition this Court to adopt rule changes to SCR 10.03 and SCR Chapter 31 that would allow State Bar members to earn only a *limited* amount of CLE credit for providing *pro bono* legal services. To date, the State Bar has not agreed to seek these rule changes. As of September 3, 2013, the State Bar President requested that the State Bar=s CLE Committee and the BBE again review the LAC=s proposed petition and respond with recommendations as they deem appropriate by November 4,

2013, if possible. According to the State Bar, this time frame will allow the State Bar=s Executive Committee to review the BBE and CLE Committee responses in time to decide whether and in what manner@ to forward the proposed petition to the BOG for the December 2013 meeting. If the BOG were to consider it at the December 2013 meeting, it could not approve it then, but would have to wait until the February 2014 meeting to act. Even then, approval is not guaranteed.

39. *A pilot program supported by the Court=s budget:* This was suggested several times during the administrative conferences, but the Court declined to act on this suggestion.

40. *A pilot program designed and implemented by the Wisconsin Access to Justice Commission (ATJC):* The ATJC did design a pilot program, but the State Bar declined to fund it, thus it could not be implemented. The ATJC Pilot Project was designed to address a number of the questions raised by several Justices during the administrative conferences.

41. Not only was an ATJC-sponsored pilot project discussed at length during the administrative conferences, it was a major part of the Court=s order denying the petition:

The Wisconsin Access to Justice Commission has advised the court of its commitment to developing an Appointment of Counsel Pilot Project for indigents in one or more selected categories of civil cases involving basic human needs. Because a Pilot Project would necessitate circuit court participation, John Voelker, Director of State Courts, is

already working with the Commission on the Pilot Project and his office will continue to assist the Commission on the Pilot Project to the extent the Director deems practicable. The court asks the Commission to keep this court apprised of the progress of the Pilot Project, including any budget that may be developed and the timetable and scope of its implementation. The court recognizes that data compiled from the Pilot Project may assist the court in developing a future biennial budget request to provide additional state funding to assist in funding the appointment of counsel for indigents as required by law. The court also urges the Commission to consider consulting with and facilitating the participation of representatives of the Wisconsin Counties Association, County government and circuit court clerks.

February 24, 2012 Order in Petition 10-08 (hereafter A2/24/12 Order@).

42. The Wisconsin Access to Justice Commission did develop an Appointment of Counsel Pilot Project for indigents in one or more selected categories of civil cases involving basic human needs, with the following elements involved in its effort:

- a. the assistance and participation of the Director of State Courts because a Pilot Project would necessitate Circuit Court participation;@
- b. the active involvement of two Jefferson County Circuit Court judges in planning the Pilot Project, as well as their expressed willingness to conduct the project in their courts and to perform much of the data tracking;
- c. Consultation with and participation of the Wisconsin Counties Association;
- d. Consultation with the Circuit Court clerk through the two judges;
- e. Many hours of work, planning discussions and exchanges of drafts and e-mails, beginning in January of 2012 and extending to November of 2012;

- f. A written Proposed Pilot Project for Court Appointment of Counsel in Critical Civil Cases, together with a written Response to State Bar Finance Committee Questions re Proposed Pilot Project . . . ,@ submitted by the ATJC to the State Bar on October 15, 2012, attached to this petition and incorporated herein by reference;
- g. A request by the ATJC to the State Bar for \$100,000 from the State Bar=s Access to Justice Reserve Fund to financially support the pilot project;
- h. A willingness on the part of Jefferson County to contribute \$10,000 toward the function of the court clerk=s issuance of payments to attorneys once their bills were approved.

43. The information which was intended to be gathered as part of the pilot project was:

- a. The classifications of civil cases in which courts decide to appoint counsel.
- b. The number of cases in which no party requests an attorney and the judge does not consider an appointment.
- c. The cost of appointment by case classification.
- d. The judge=s rationale for such appointments and for nonappointments. The rationale would be part of the record in the case.
- e. The judges= conclusions about attorney appointments. These would address both justice (fairness) and efficiency. The specific factors underlying the overall conclusions could be included in the appointment rationale for each case.
- f. The potential consequences of nonappointment in various cases, including human cost and system costs. Any dollar assessment of human cost would not be funded with the \$100,000, but with other funds, if available.

44. The criteria employed by the ATJC=s Pilot Project Working Group in discussing the selection of a county or counties for the pilot project were:

- a. Willing judges
 1. Willing to appoint
 2. Willing to keep records
 3. Willing to administer
 4. Willing to write up rationales and overall conclusions
- b. Medium size
- c. Mixed rural and urban
- d. Provide a case volume of approximately 100
- e. General civil court - not specialized into AFamily,@ ALarge Claims,@ AJuvenile,@ etc.
- f. All of the county=s civil court judges willing to participate

45. Because of the limited amount of funds for the pilot project, a multiple-county pilot was considered not to be feasible. Circuit Judges William Hue and Jennifer Weston expressed their enthusiasm about having Jefferson County participate, and their willingness to do all that would be required of judges in the project. Judge Hue had experience in appointing counsel. He had successfully worked with appointed attorneys and the Jefferson County Administrator each time that he had made

an appointment. Jefferson County is of medium size, and is mixed rural and urban. It has 8,766 persons below the poverty line, which is double that of the 2000 Census (4,111). The poverty rate is 10.9%, while the overall Wisconsin poverty rate is 13.22%. The number of 2011 service requests to Legal Action of Wisconsin was 179, of which Legal Action opened 129 and closed 119. Thus, the case volume of 100 would be easily met. Judges Hue and Weston agreed with this case volume estimate. At that time, Judges Hue and Weston handled all of the civil cases in Jefferson County. There were two other judges; they handled only criminal and traffic cases.

46. Because Jefferson County met the selection criteria, and especially because Judges Hue and Weston were enthusiastic about participating, the ATJC Working Group recommended Jefferson County as the host of the pilot project.

47. The inherent power of the courts to appoint was to be expressly acknowledged as the basis for appointment in this pilot project, based on this Court=s

2/24/12 Order:

The petition relies on the inherent power of Circuit Courts to appoint counsel for indigent persons. The court has set forth the inherent power of circuit courts to appoint counsel for indigent persons in civil cases in Piper v. Popp, 167Wis.2d 633, 658, 482 N.W.2d 353 (1992), and Joni B. v. State, 202 Wis.2d 1, 549 N.W.2d 411 (1996). Our decision regarding this petition does not undermine the holdings of these cases.

48. The Jefferson County judges were to have used their inherent power to appoint counsel to represent low-income unrepresented, litigants in accordance with the rule proposed in Petition 10-08: where a civil litigant was indigent (defined as below

200% of the federal poverty guidelines), and where the assistance of counsel was needed to protect the litigant=s legal rights as they affected basic human needs such as sustenance, shelter, heat, medical care, safety and child custody and placement. In making the determination as to whether the assistance of counsel was needed, each judge was to have considered the personal characteristics of the litigant, such as age, mental capacity, education, knowledge of the law and of legal proceedings, the complexity of the case, and whether other parties in the case were represented by counsel. The judge could also have considered additional factors which s/he deemed relevant.

49. Funding for the Appointment of Counsel Pilot Project was to be a \$100,000 allocation from the State Bar of Wisconsin=s Access to Justice Reserve Account. At least 85% of the funding would have been designated to pay solely for appointed counsel. Up to 15% would have been available for implementation, analysis and evaluation costs.

50. The grant money would have been administered by the Jefferson County Circuit Court in cooperation with the ATJC. The two Jefferson County judges would appoint counsel where, in their discretion, appointment was appropriate. Attorneys would provide time estimates for each case. The judges would monitor the consumption of appointment-of-counsel funding, and would stop appointing when they projected that available funding would be used up. The judges would review attorneys= requests for payment, and the Clerk of Court would issue payments once the bills were approved.

51. After a presentation by Judge Hue to the Jefferson County Board of

Supervisors, Jefferson County agreed to contribute \$10,000 toward the clerk payment function.

52. In Judge Hue=s discussion with members of the Jefferson County Board of Supervisors, it was determined that it would not be feasible to be the trustee of, and administer funds associated with, the Pilot Project through the county=s existing staff. It was determined that a part-time (20-hour) limited-term employee would be sufficient and

could be hired to serve in that capacity. The Board felt that it should not be Jefferson County=s 100% responsibility to fund that position, but that it would be willing to contribute on a dollar-for-dollar matching basis, up to \$10,000, in recognition of the value of the project, in partnership with the Commission.

53. Thus, there was significant and valuable county cooperation in this pilot project.

54. In answer to the State Bar=s question about what Ametrics@ would be used to Adetermine success or failure,@ the ATJC informed the Bar that the Commission had not formulated the project in terms of Asuccess@ or Afailure.@ The ATJC stated that, as noted in the proposal, the purpose of the project was to Agather knowledge about the effects of the appointment of counsel in critical civil cases,@ and one of the particular

goals was to ascertain the judges' conclusions about attorney appointments. These conclusions were to address the impact of the appointment of counsel on both justice, in the sense of fairness to the litigant, and efficiency. The ATJC said that it is doubtful that there is a metric applicable to justice in this context; certainly justice cannot be measured by whether the litigant wins or loses the case.

55. The proposal contemplated that the judges would keep notes for each case in which an appointment was made that would describe the effect of the appointment of counsel on the fairness of the procedure.

56. With respect to the effect of appointment on the court's efficiency, the judges were to note in each case in which an appointment was made whether court time had been saved by the appointment.

57. The number of cases to which attorneys would have been appointed at the funding level that the ATJC was requesting was too low to permit the application of time or duration metrics.

58. The ATJC also informed the Bar that it did contemplate an attempt to assess the consequences of non-appointment in various cases, including human and system costs. The metrics applicable to this could best be suggested by professional evaluators, and the ATJC had not sought out nor retained such evaluators because it

didn't know whether the State Bar would support the attorney part of the project, or whether the ATJC could obtain foundation funding for the evaluation of the costs of non-appointment, although the Commission believed that it could.

59. The ATJC Working Group had also put together a very detailed APilot Project Analysis@ with a spreadsheet that could have been used by court personnel as cases went through the system. This analysis and spreadsheet are attached to this petition and incorporated herein by reference. Refinement of this analysis was rendered moot when the State Bar failed to fund the project.

60. On October 26, 2012, the Finance Committee of the State Bar declined to recommend to the BOG that the State Bar provide \$100,000 from its Access to Justice Reserve Fund to support the Pilot Project, but recommended only \$10,000, and that not for the operation of the Pilot Project, but only to hire Aresearch experts who can help with questions of study design and metrics@;

61. On November 15, 2012, the ATJC discussed the State Bar=s denial of the \$100,000, which discussion included the following points raised by various Commission members:

- a. Whether it would be worth the additional time, money and effort that would be required to improve the study design when there was no

assurance that adequate funding could be obtained from either the State Bar or the court system;

- b. Based on what other states have done, a study that would produce the kind of results the Finance Committee was looking for would cost hundreds of thousands of dollars, and it was unlikely that that type of funding would be available from the State Bar or any other potential funding source in Wisconsin;
- c. According to the consultant from the ABA Civil Right to Counsel Project, the average cost of the studies in other states was about \$400,000;
- d. The Commission could simply wait for results to be reported from California or another state;
- e. The type of pilot project data that the Wisconsin Supreme Court order indicated would be helpful (cost per case) is not the same information that the State Bar Finance Committee appears to value; and
- f. The State Bar has its own financial challenges, and Bar leadership or Bar membership may not look favorably on a request to pay for a project that was initiated by the court system when the court system did not include any funding for the project in its recent budget submission to the state.

62. As the result of this discussion, the ATJC passed a motion, unanimously, that a letter be written to the Supreme Court and the State Bar regarding the Appointment of Counsel Pilot Project Proposal, setting forth:

- a. a summary of the Commission=s work to design a pilot project;
- b. that the Commission=s request for \$100,000 from the State Bar to fund the pilot project was denied; and
- c. that, although the State Bar=s Executive Committee had authorized up to \$10,000 to design an improved empirical study that would be the basis for considering whether to fund a revised proposal, the

ATJC did not believe such a study was necessary to gather the information requested by the Supreme Court.

63. The remedies suggested by members of this Court in its administrative conferences and its order in Petition 10-08 have not been implemented, and the problem of injustice for unrepresented litigants remains. Thus, as the Court anticipated in conference, the petitioners below feel compelled to return to the Court for relief. As John Skilton, Past President of the State Bar, stated: "We fail only when we quit."

64. A Court-funded pilot project can take advantage of all of the planning work already done by the ATJC, and the project can answer the questions raised by various Justices in the administrative conferences.

65. The pilot project can be funded as being necessary to carry out the Supreme Court's functions, and thus within the general program operations funded by the Court's sufficient appropriation under Wis. Stat. § 20.680(1).

66. The Court rule requested in Petition 10-08 remains as necessary now as in 2010. As declared in *Piper v. Popp* and *Joni B. v. State*, the federal and state constitutions require that trial courts determine on a case-by-case basis whether due process necessitates appointment of counsel essential to a fair hearing.

67. The Wisconsin Constitution bestows upon judges the inherent power to appoint, yet the courts in all but a very few cases are *not* appointing counsel, and need the

encouragement and guidance of a Supreme Court rule.

68. To assure constitutional fundamental fairness and equal protection of the law through the appointment of counsel will require the leadership of this Court, and clear guidance from this Court.

69. Testimony before the Access to Justice Commission on September 13, 2012, described the need for leadership by this Court:

The fight for equal justice in Wisconsin needs the leadership of our Supreme Court . . . It is absolutely crucial that when lawyers and non-lawyers are . . . directed to the plight of poor people's access to the courts, they see the Supreme Court leading the way . . . It has not been out front leading the way in access to justice issues in Wisconsin. Yet who better to advocate on the issue, to lobby lawyers to undertake pro bono, to talk to the legislature about the crisis, to be the public voice defining the problem and educating the public?

The answer is obvious to the lawyers working on access issues, but while the Court is supportive of the effort, there is a seeming reluctance to jump into the fight and mix it up. . . . In many states, the Court leads the way. In Wisconsin, the lawyers are out in front. And I believe that has to change.

70. This Court has a tradition of vigorous independence in commanding sufficient resources to carry out its constitutional duties and powers as the leader of the court system. This Court has, on numerous occasions over the past 162 years, stepped up and declared "You must fund the court system." This tradition includes the following decisions:

Supervisors of Crawford County v. Le Clerc, 4 Chand. 56, 3 Pin. 325 (1851)

Carpenter v. County of Dane, 9 Wis. 274 (1859)

In re Janitor, 35 Wis. 410 (1874)

Stevenson v. Milwaukee County, 140 Wis. 14, 121 N.W. 654 (1909)

In re Court Room, 148 Wis. 109, 134 N.W. 490 (1912)

State v. Cannon, 196 Wis. 534, 221 N.W. 603 (1928)

State v. Holmes, 106 Wis. 2d 31, 315 N.W. 2d 703 (1983)

Contempt in State v. Lehman, 137 Wis. 2d 65, 403 N.W. 2d 438 (1987)

State ex rel. Chiarkas v. Skow, 160 Wis. 2d 123, 465 N.W. 2d 625 (1991)

Friedrich v. Circuit Court for Dane County, 192 Wis. 2d 1, 531 N.W. 2d 32
(1995)

Joni B. v. State, 202 Wis. 2d 1, 549 N.W. 2d 411 (1996)

Barland v. Eau Claire County, 216 Wis. 2d 560, 575 N.W. 2d 691 (1998)

71. This Court=s commanding of resources sufficient to fund a pilot project designed to provide information on the appointment of counsel in civil cases should be made a part of this tradition.

NOW, THEREFORE, the signatories to this petition hereby request that the Wisconsin Supreme Court:

1. Allocate funds in the Supreme Court budget to plan and implement Aan Appointment of Counsel Pilot Project for indigents in one or more selected

categories of civil cases involving basic human needs.@ See Order in
Petition 10-08, 2/24/12.

2. Promulgate a rule, in whichever chapter of the Supreme Court Rules it
deems appropriate, whether Chapter 70, Chapter 81, or a new chapter, that
provides:

Where a civil litigant is indigent (defined as
below 200% of the federal poverty guidelines),
the court shall provide counsel at public expense
where the assistance of counsel is necessary to
ensure a fundamentally fair hearing in a court
proceeding which will affect the litigant=s basic
human needs, including

sustenance, shelter, heat, medical care, safety, and
child custody and placement. In making the
determination as to whether the assistance of
counsel is needed, the court may consider the
personal characteristics of the litigant, such as
age, mental capacity, education, and knowledge
of the law and of legal proceedings, the
complexity of the case, and whether the other
parties in the case are represented by counsel.

SIGNED:

