STATE OF WISCONSIN

SUPREME COURT

MEMORANDUM IN SUPPORT
OF PETITION FOR A PILOT PROJECT
AND A RULE GOVERNING
APPOINTMENT OF COUNSEL
IN CIVIL CASES

TO: The Honorable Justices of the Wisconsin Supreme Court

INTRODUCTION

Petitioners are Wisconsin residents, and include persons who were among the 1,320 residents who filed Petition 10-08 seeking an amendment to Supreme Court Rule 11.02, which would have established guidelines for the appointment of counsel in civil cases. The instant petition asks the Court to promulgate a similar rule as part of an SCR chapter deemed most appropriate by the Court. In administrative conference, various Justices suggested that the rule might belong in Chapter 70, Chapter 81 or a new chapter. Therefore, we have not designated a specific rule or chapter, but leave that to the discretion of the Court.

The rule sought in the instant petition amends the rule sought in Petition 10-08 as shown in the following legislative format:

> 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 ~~needed~~ necessary to ensure a fundamentally fair hearing in a court proceeding which will affect the litigant's ~~protect the litigant's rights to~~ basic human needs, including sustenance, shelter, ~~clothing,~~ heat, medical care, safety, and child custody and placement. In making the determination as to whether the assistance of counsel is ~~needed~~ necessary, 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.

Because this rule is substantially similar to the rule sought in Petition 10-08, we will rely on the "Memorandum Supporting Rule Petition 10-08 For Amendment of SCR 11.02" for a part of the "thorough, detailed explanation of each amendment and reasons for the change." We incorporate that memorandum by reference in this Memorandum in Support. We will not repeat that explanation here, but we will explain why the rule is necessary to encourage the Circuit Courts to carry out their

constitutional duties.

This petition also asks the Court to allocate funds in the Supreme Court budget to plan and implement, in the words of the Court's February 24, 2012 Order (hereafter "2/24/12 Order") denying Petition 10-08, "an Appointment of Counsel Pilot Project for indigents in one or more selected categories of civil cases involving basic human needs." We seek this because it was suggested during the Court's administrative conferences on Petition 10-08, and because the Wisconsin Access to Justice Commission (hereafter "ATJC") pilot project contemplated in the Court's 2/24/12 Order went nowhere.

We will address the required contents of a Memorandum in Support in the order in which they are listed in the Court's "Guidelines for Rules Submissions."

I. Explain whether the petitioner seeks to amend or create a statute or rule.

II. Identify the statute or rule being changed or created.

The petitioners seek to create a rule which would require that Circuit Court judges appoint attorneys at public expense for indigent litigants where the assistance of counsel is necessary to ensure such litigants a fundamentally fair hearing in court proceedings which affect the litigants' basic human needs. The rule sets forth, as guidance to the courts, several factors for the courts to consider in determining whether counsel is necessary.

The Court's administrative conference discussion of Petition 10-08 indicated that such a rule could be placed in Chapter 70, Chapter 81 or a new chapter, so we do not specify a rule number which is being changed or created.

Petitioners also seek the Court's funding of the planning and implementation of a pilot project regarding the appointment of counsel in civil cases. We do not believe that this will require a rule change.

III. Provide a thorough, detailed explanation of each amendment and the reasons for the change.

A. The Proposed Rule

1. *There is an existing constitutional duty of Circuit Courts to determine, in each civil case, whether counsel is essential to a fundamentally fair hearing.*

The reason for the rule is that Wisconsin Circuit Courts are not making constitutionally-required individualized determinations as to whether indigent civil litigants need counsel appointed in order to have a fundamentally fair trial or hearing, even though the Wisconsin Constitution has conferred on those courts the inherent power to appoint.

As stated in the Introduction, the rule requested by the instant petition is similar to that requested by Petition 10-08, so the arguments set forth in that Memorandum in Support will not be repeated in this Memorandum. We do, however, incorporate the Memorandum in Support of Petition 10-08 in this Memorandum by reference, and we request that the Court consider it when passing on this petition.

The primary difference between the two rules is the following language added by the instant rule:

> . . . ensure a fundamentally fair hearing in a court proceeding which will affect the litigant's . . .

as well as the language ". . . and whether other parties in the case are represented by counsel." This additional language focuses on the courts' constitutional duty to determine, in each civil case, whether counsel is essential to a fundamentally fair hearing. This is an *existing* constitutional duty, not an inchoate right which can be avoided.

To argue 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 – to a hearing which is fundamentally fair.

This Court decided two cases which establish this right, and decided them unanimously. In *Piper v. Popp*, 167 Wis. 2d 633, 482 N.W. 2d 353 (1992), this Court began its analysis:

> with the axiom that before the state may deprive an individual of life, liberty or property, the state must accord the individual a meaningful opportunity to be heard. . . . due process is satisfied "if the procedures provide an

> opportunity to be heard at a meaningful time and in a meaningful manner."

Id. at 644. The Court continued:

> The Fourteenth Amendment bars a state from denying any person a fundamentally fair trial.

Id. at 650. And,

> . . . the existing case law providing that every person has a right to be heard in a meaningful manner . . . due process requires that the state grant the prisoner a meaningful opportunity to be heard.

Id. at 658.

This Court held in *Piper* that an indigent litigant is *entitled* to an individualized determination of the constitutional necessity of appointed counsel in that case. *Id.* at 646.

> The circuit court must determine, subject to appellate review, how a meaningful opportunity to be heard is to be achieved in the particular case.

Id. at 658-59.

The Circuit Court is to do this by weighing the *Mathews v. Eldridge* elements against the presumption against appointed counsel:

> When applying the presumption against an indigent litigant's right to appointed counsel, *a court must*, according to the United States Supreme Court, determine on a case-by-case basis whether to appoint counsel by weighing other elements in due process against the presumption against appointed counsel. *Lassiter*, 452 U.S. at 31. If the other elements in due process suffice to rebut the presumption against appointed counsel, *then due process requires the appointment of counsel.*

Id. at 647 (emphasis supplied.)

> A determination of whether appointed counsel is necessary requires a balancing of the three elements in due process to determine whether they overcome the presumption against appointed counsel.

Id. at 649.

The three elements are the *Mathews v. Eldridge* elements:

> . . . (1) the private interests at stake; (2) the risk that the procedures used will lead to erroneous decisions; and (3) the government's interest at stake. *Lassiter*, 452 U.S. at 27 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

Id. at 647. This Court then engaged in this analysis in the *Piper* case, at 649-650.

This Court in *Piper* also held that Circuit Courts possess the inherent power to appoint counsel for indigent litigants:

> We agree with the parties that a circuit court possesses inherent authority to appoint counsel for indigent litigants.

Id. at 658.

In *Joni B. v. State*, 202 Wis. 2d 1, 549 N.W. 2d 411 (1996), this Court stated, citing *Piper v. Popp*:

> Our due process inquiry centers on the issue of fundamental fairness because, as we have previously stated, "the Fourteenth Amendment bars a state from denying any person a fundamentally fair trial."

Id. at 12.

In *Joni B.*, this Court held, as it did in *Piper*, that

> . . . due process requires an individualized determination of the necessity for appointment under the circumstances presented by the particular case.

Id. at 18. This Court stated:

> *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.

Id. at 13, n. 7 (citing *Piper*) (emphasis supplied.)

This Court in *Joni B.* reaffirmed that this determination is to be made by balancing the "net weight" of the *Mathews v. Eldridge* elements against the presumption that a right to counsel exists only when personal freedom is jeopardized. *Id.* at 13.

Subsequent to *Joni B.*, the Wisconsin Court of Appeals declared that Circuit Courts *must* exercise the discretion recognized by *Piper* and *Joni B.* when a party requests counsel *or* "when the circumstances otherwise raise a reasonable concern that the [party] will not be able to provide meaningful self-representation." *In the Interest of Xena X. D.-C. v. Tammy L.D.*, 2000 WI App. 200, ¶32.

Further, this Court in *Joni B.* suggested to Wisconsin trial courts that, when a court either grants or denies a request for counsel, it should memorialize its findings and rationale on the record to facilitate appellate review. 202 Wis. 2d at 21. Pursuant to *Xena X.*, this should also be done in cases where there is no request, but "circumstances . . . raise a reasonable concern."

The Due Process obligation on Circuit Courts to determine in each case whether due process necessitates appointment of counsel is strong and clear, yet few Circuit Courts are meeting this obligation. This systemic denial of due process can be rectified by leadership from the Wisconsin Supreme Court through the issuance of the proposed rule.

2. *Wisconsin courts are denying impoverished litigants the equal protection of the law.*

In refusing to conduct this due process determination, the Circuit Courts are also denying impoverished litigants the equal protection of the law.

The Wisconsin Constitution, in Article I, Section 21(2), guarantees to litigants who can afford lawyers the right to appear in court by attorneys of their choice:

> 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.

Suitors who have the money to hire lawyers are thus protected by the Wisconsin Constitution from having to go it alone in court, whether or not going it alone would mean the denial of a fundamentally fair hearing.

Wisconsin has an Equal Protection Clause. It is 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.

Indigent litigants who are denied the ability to appear by an attorney when that attorney is essential to a fundamentally fair hearing are denied the protection of Article I, Section 21(2), and are thus denied the equal protection of the law.

B. The relevance of Petition 10-08 to the instant petition.

Three years ago, on September 30, 2010, several of the instant petitioners were among the 1,320 signatories to Petition 10-08. At the day-long hearing on that petition held on October 4, 2011, 23 speakers set forth, again and again, the compelling need for appointment of counsel in order to assure fundamental fairness in Wisconsin courts. Even the three opponents did not seriously contest the need; they primarily expressed concern about the cost of appointed counsel.

The testimony of the 23 supporters of Petition 10-08 was prepared with care and delivered with passion. That testimony was thoughtful and comprehensive. It described from a great many perspectives – all those listed in the instant petition at paragraph 31 – the critical need for appointment of counsel to ensure fundamentally fair hearings. That testimony is as relevant and compelling today as it was on October 4, 2011. For these reasons, we do not request another hearing on the instant petition, but rely on the record made in Petition 10-08 as to the essentiality of appointed attorneys to fundamentally fair hearings, and the great need for appointments. To that end, we have attached copies of the WisconsinEye DVD recording of that hearing, which we incorporate by reference in this petition. We ask that the Court consider that October 4, 2011 testimony in deciding the fate of the instant petition.

C. The remedies short of attorney appointments which were proffered in conference have come to naught.

Our petition discusses the several suggested remedies short of attorney appointments which were proffered in the Court's administrative conferences, and the fact that all have come to naught.

1. *Judicial Education.*

The modest and one-time judicial education which occurred in 2012 did not cure the problem. For example, recently a Milwaukee County Circuit Court judge *removed* an attorney who had been appointed by the predecessor judge in that case. It is our understanding that no judicial education about the inherent power of Circuit Courts to appoint counsel in civil cases, or the obligation to analyze whether appointment is required to ensure a fundamentally fair hearing, took place in 2013 or is planned for 2014 and subsequent years.

2. *The inclusion of guidance for judges as to the meaning of Piper and Joni B. in the Wisconsin Judicial Benchbooks-Civil, the Wisconsin Jury Instructions-Civil, or the "special materials";*

3. *The keeping of statistics by the court system, through CCAP or otherwise, of the number of attorney appointments made by the Circuit Courts; and*

4. *The awarding of CLE credits for pro bono representation.*

The lack of progress on these three suggestions is set forth in detail in the petition, and will not be repeated here.

C. The Proposed Pilot Project

In its order dismissing Petition 10-08, this Court expressed concern about the effect of that proposal:

> The parameters of the proposal are difficult to discern and the effect of the proposal on circuit courts and counties is largely unknown but may be substantial.

The testimony in opposition on October 4, 2011, the questions from several Justices at that hearing, and the subsequent dialogue at the administrative conferences lead us to construe this part of the order as meaning that the proposal may cost a lot, and that the amount is unknown.

In addition, there was considerable discussion in the December 5, 2011 administrative conference about the possibility of a pilot project planned and implemented by the Wisconsin Access to Justice Commission (ATJC) (created by the Supreme Court at the State Bar's request) and funded by the State Bar from its Access to Justice Reserve Fund.

Subsequent to this testimony and this discussion, the Court spoke in its dismissal order of an ATJC pilot project, data from which

> 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.

2/24/12 Order. Clearly, some of the "data compiled" which would assist the Court would be cost data.

Pursuant to the Court's suggestion, the ATJC proceeded in 2012 to develop a pilot project, one of the principal features of which was to compile data on the cost of appointing counsel. The pilot project is fully described in the petition and it attachments. A tremendous amount of work went into planning and designing this pilot project, and the ATJC was fortunate in finding two Circuit Court judges, Judges William Hue and Jennifer Weston in Jefferson County, who were enthusiastic about conducting the pilot project and who participated actively in its planning and design. Judge Hue took the initiative of meeting with the county board to obtain the support of its members, and was able to persuade them to contribute $10,000 in county funds to the project.

Unfortunately, this project suffered an early death when the Access to Justice Commission, whose creation had been requested by the State Bar, requested $100,000 from the State Bar's Access to Justice Reserve Account

for the purpose of increasing access to justice, and was rebuffed. The State Bar agreed to provide only $10,000, and that not to implement a project, but only to redesign the project with metrics, after which the ATJC could return to the State Bar to request further funding. The ATJC's response is fully set forth in the petition.

Much of the ATJC's pilot project work could still be utilized, should the Court agree to grant the petition's request that the Court fund a pilot project out of its budget. This pilot project could (as would the ATJC's pilot) answer many of the questions raised by the Justices in conference and provide the data contemplated in the Court's 2/24/12 dismissal order.

In the December 5, 2011 conference, the Court discussed what can be learned from a pilot project:

1. Whether, in a particular county, a pilot program does increase the number of appointments, or changes nothing.

2. Does the pilot change the courts' exercise of the inherent power to appoint?

3. Does a pilot project with specific guidelines work better than the general *Piper v. Popp* rule?

4. Which guidelines work, and which do not?

5. Do you get better results with a lawyer?

6. What is the satisfaction of the judge, the bar and the clerk of court where you have an exercise of inherent authority?

7. What are the costs?

The ATJC pilot would have provided helpful information regarding most or all of these questions. Its adaptation by the Supreme Court can do the same.

The pilot project could be funded from the Court's "sum sufficient" appropriation for general program operations, as being necessary "to carry its functions into effect." *See* Wis. Stat. §20.680(1). That function would be the obtaining of necessary information important to the assurance of due process and the equal protection of the law throughout the court system which the Supreme Court supervises.

A pilot project funded from the Court's budget was one of the important suggestions made during the administrative conferences, and we believe that that suggestion should be pursued.

D. <u>The Supreme Court should exercise leadership through implementing this rule and conducting this pilot project</u>.

The lack of progress on all of the Court's suggested alternatives

shows that little will ever be done without the leadership of this Court. The testimony before the ATJC quoted in the petition underscores the need for Court leadership.

As we state in the petition, this Court has a very long tradition of vigorous independence in commanding sufficient resources to carry out its constitutional duties and powers as the leader of the court system. From the commandment of a janitor in 1874 and a proper courtroom in 1912 to the commandment of a preferred judicial secretary in 1998, this Court has ensured that the courts have the resources to act as courts "because they are courts." *State v. Cannon*, 196 Wis. 534, 536 (1928). This has included exercising inherent power over county boards:

> A county board has no power to even attempt to impede the functions of such a court, and no such power could be conferred upon it.

Id., quoting *In re Court Room*, 148 Wis. 109, 121 (1912).

Petitioners ask this Court to carry on this tradition by promulgating a rule to encourage and guide the lower courts in carrying out their constitutional duties, and by stepping up and declaring "you must fund the court system" through the very modest step of funding, from its sum

sufficient appropriation, a pilot project designed to provide the information on the appointment of counsel in civil cases which the Court said was lacking when it denied Petition 10-08.

IV. Explain how the proposed amendment would affect any person's procedural or substantive rights.

The proposed rule, together with the pilot project, will safeguard the existing procedural rights of hundreds of low-income litigants by ensuring that they will receive determinations from the courts, guided by the factors in the rule, as to whether the process that is due them includes the appointment of counsel.

The assistance of counsel would improve litigants' ability to protect whatever substantive legal rights are at issue in their lawsuits.

The proposal will not create new procedural or substantive rights.

V. Identify experience of other state or federal courts, if applicable.

A. Other State court rules

The following experience of other state courts was submitted in

support of Petition 10-08 by Debra Gardner and John Pollock of the National Coalition for a Civil Right to Counsel, and is relevant to the instant petition. We repeat it here in their words, as set forth in their September 2, 2011 letter to the Court.[1]

> **I. <u>Eight States Authorize a Trial Judge to Appoint Counsel in Any Civil Case</u>**
>
> Eight states already authorize civil court judges via statute to appoint counsel in any civil case (subject in some instances to certain prerequisites): . . . The states with these statutory provisions are Illinois, 735 ILCS 5/5-105(g), Indiana, Ind. Code § 34-10-1-2, Kentucky, Ky. Stat. § 453.190(1), Missouri, Mo. Stat. Ann. § 514.040(1), New York, N.Y. C.P.L.R. § 1102(a), Tennessee, Tenn. Code Ann. § 23-2-101, Texas, Tex. Govt. Code § 24.016 (district court) and Tex. Govt. Code §26.049 (county court), and Virginia, Va. Code Ann. §17.1-606. These statutory provisions are embedded within each state's *in forma pauperis* procedures, reflecting the state's recognition that a) waiving court costs is not always enough to protect the basic needs of indigent litigant without counsel; b) various types of civil cases might warrant appointment of counsel; and c) trial court judges at least should be able to examine the circumstances of each case to determine whether counsel is necessary to protect the litigant's basic rights.

1 Updated language will be set forth as underscored or lined through if deleted.

II. In Eight States, Courts Have Exercised Rulemaking Powers to Authorize or Require a Trial Judge to Appoint Counsel in Types of Civil Cases Where a Right to Counsel Does Not Exist by Statute

In eight states, courts have used their rulemaking power to empower trial court judges to appoint counsel for certain types of civil cases even absent specific statutory authorization.

* * *

The rules in these eight states are described below:

- Delaware: In 2002, the court enacted two rules providing for appointment of counsel in dependency and termination cases. The first, De. R. Fam. Ct. RCP Rule 206, requires the court to "notify parents in writing that they may be represented by counsel," while Rule 207 adds, "[a] parent determined by the Court to be indigent may have counsel appointed by the Court during the parent's initial appearance on a petition, or such other time as deemed appropriate by the Court." While this language might seem to make appointments of counsel discretionary, the high court in *Hughes v. Division of Family Services*, 836 A.2d 498, 509 (Del. Supr. 2003), stated, "In 2002, the Family Court Civil

Procedure Rules were amended to provide for *mandatory* appointment of an attorney in the case of an indigent party if so requested by that party..." (emphasis added).

- Idaho: Idaho Code Ann. §16-1613(1), which governs Child Protective Act proceedings, states, "If the parent or guardian is without counsel, the court shall inform them of their right to be represented by counsel and to appeal from any disposition or order of the court." This statute likely provides only a right to privately retained counsel, as a) Idaho Code Ann. §16-1618 used to refer to the court having the power to "appoint independent counsel for a parent if the proceedings are complex, counsel is necessary to protect the parent's interests adequately and such interests are not represented adequately by another party", but this language was deleted in 2001; and b) Idaho Code Ann. §16-1614 specifically refers to appointment of counsel for the child and makes no mention of appointment for the parents. In contract, I.R. Juv. Rule 37(d) states, "The parent(s), guardian, or legal custodian has the right to be represented by counsel in all proceedings before the court. The court shall appoint counsel to represent the parent(s), guardian, or legal custodian if it finds that they are financially unable to pay for such legal services, unless

representation is competently and intelligently waived."

- Kentucky: The Kentucky Rules of Civil Procedure provide that in a civil suit against a prisoner, "If for any reason the prisoner fails or is unable to defend an action, the court shall appoint a practicing attorney as guardian ad litem, and no judgment shall be rendered against the prisoner until the guardian ad litem shall have made defense or filed a report stating that after careful examination of the case he or she is unable to make defense." Ky. R. Civ. P. 17.04.

- Michigan: While a statute provides that a court must appoint "an attorney *or* guardian ad litem" for minors seeking a judicial waiver of the parental consent requirement to have an abortion, M.C.L.A. § 722.904(2)(e), a court rule provides for the right to appointment of both an attorney *and* a GAL upon request by the minor. Mi. R. Spec. P. MCR 3.615(F), (G). ~~Additionally, pursuant to Mi R. Spec. P. MCR 3.217, an indigent putative father in a paternity action is entitled to an attorney at public expense. This particular rule might be the implementation of *Artibee v. Cheboygan Circuit Judge*, 243 N.W.2d 248, 249 (Mich. 1976) (finding right to counsel in paternity proceedings under state constitution's due process clause).~~

- Minnesota: While Minn. Stat. Ann. § 260C.176 subd. 3(7) provides children with a right to counsel in dependency/termination of parental rights proceedings only if they are being placed in a detention or shelter care facility, Minn. R. Juv. Prot. P. 25.02 expands this right: "if the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child who is ten (10) years of age or older and may appoint counsel to represent a child under age ten (10) in any case in which the court determines that such appointment is appropriate." Thus, children over 10 are entitled to counsel regardless of placement in a facility, pursuant to the court rule. Furthermore, Minn. Gen. R. Prac. 357.03 requires appointed counsel in contempt cases when incarceration is a potential outcome, which may be the implementation of *Cox v. Slama*, 355 N.W.2d 401, 403 (Minn. 1984) (recognizing right to counsel in contempt cases based on supervisory power).

- New Jersey: A court rule states, "In all cases where custody or parenting time/visitation is an issue, the court may, on the application of either party or the child or children in a custody or parenting time/visitation dispute, or on its own motion, appoint counsel on behalf of the child or children." N.J. R.

Ch. Div. Fam. Pt. R. 5:8A. Additionally, in all family matters, if a proceeding could "result in the institutional commitment or other consequence of magnitude to any family member," the court must provide counsel. N.J. R. Ch. Div. Fam. Pt. R. 5:3-4.

- ~~Rhode Island: A court rule specifies that upon a filing of a petition for termination of parental rights, "A preliminary hearing shall be held on said petition for the court to: (4) Appoint an attorney to represent the parent(s) and any person having such care or custody of such child when said parent(s) or custodian are unable to afford such representation..." R.I. Juv. P. Rule 18(c). In *In re Bryce T.*, 764 A.2d 718, 721 (R.I. 2001), the Rhode Island Supreme Court noted that the rule requires appointment of counsel "despite the lack of a constitutional mandate" and apparently despite the lack of a statutory provision as well.~~

- Tennessee: In juvenile proceedings, Tenn. R. Juv. P. Rule 36(b) extends the right to counsel for parents/children to the appellate stage.

- Washington: A court rule provides that appointment of counsel can be one type of reasonable accommodation provided to litigants with disabilities. Wash. GR 33. Additionally, three counties have

adopted rules providing for mandatory appointment of counsel for children of a certain age in dependency cases. King County LJu 2.4; Hell's Canyon Circuit HCCLR 24; Benton/Franklin LJuCR 9.2(A)(1)(e).

B. Other state pilot projects.

Other states are conducting pilot projects to examine the effect of appointment of counsel.

1. *California*

This multiple-project pilot is funded in the amount of $10-11 million per year for six years through court fees. A Republican Chief Justice, Ronald George, was a staunch advocate of this pilot program. The evaluation will be completed in 2015.

2. *Boston*

The Boston pilot's funding of almost $400,000 came from three private foundations. The evaluation was conducted at no charge. This pilot was conducted in eviction courts. A second round of eviction pilots is currently underway, and the state attorney general's office has provided $400,000 per year for two years to conduct the second round of pilots.

3. *Iowa*

The Iowa pilot program studies domestic violence cases. Its budget is $900,000, all of which is to go to the evaluation, and was provided by the National Institute for Justice. Representation is provided by Iowa Legal Aid with its regular funding. In the midst of the project, Iowa Legal Aid suffered large funding cuts, which slowed the project considerably.

4. *Vera Institute Immigration Pilot.*

This project would create a legal services office in an immigration center with a full screening system. The project contemplates 600-700 cases per year, a cost of $2.5 million per year, and a three-year evaluation.

5. *New York City Immigration Pilot*

The City of New York committed $500,000 to plan a pilot around categorical representation of all city residents in immigration removal proceedings.

6. *Illinois*

The Illinois legislature adopted a bill in 2013 that will provide roughly $5-6 million per year for five years to study the impact of providing counsel in eviction cases.

VI. Analyze the fiscal and administrative impacts, if any, of the proposal.

It is impossible to know how many appointments of counsel would be made under the proposed rule. Nor is there any kind of data as to the cost of counsel in various types of cases, other than the Legal Action of Wisconsin data that we used in our Petition 10-08 cost estimates. Cost was a significant reason that the Court suggested that the ATJC conduct a pilot project, and cost data would be one of the yields of the Court-funded pilot project which petitioners are requesting in this petition.

As to the fiscal impact of the pilot project itself, the ATJC had hoped to obtain State Bar funding of $100,000 to cover 100 cases.

The administrative impact of the rule would be the appointment and payment of counsel by Circuit Court clerks and judges. The administrative impact of the pilot project would likely be that set forth in the ATJC pilot project – the appointment of counsel by participating judges, the review and approval of attorneys' requests for payment, and the issuance of payments by the Director of State Courts from the Supreme Court budget.

VII. List any related petitions pending before the Court.

There are no related petitions pending before the Court, save perhaps the petition filed by the ATJC regarding judges' treatment of *pro se* litigants.

VIII. List the committees, agencies and individuals that the petitioners have consulted about the proposal.

As stated in the Memorandum of Support for Petition 10-08, for a substantially similar rule, we consulted with the 1,320 signers of that petition. We also consulted with 13 bar organizations, including the State Bar of Wisconsin.

With regard to the instant petition, we consulted with Commissioner David Keck, Attorney Patricia Zeeh Risser (re CLE for *pro bono*), the Office of State Courts and Judge William Hue. We also worked with the ATJC in planning its pilot project.

IX. CONCLUSION

Due Process and Equal Protection require that Wisconsin Circuit

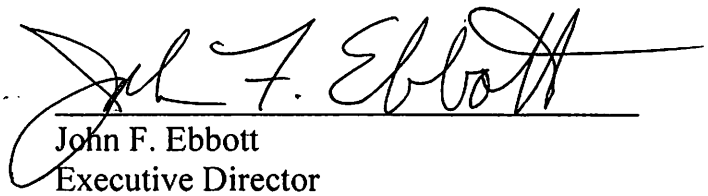
Courts make individualized determinations in each case as to whether indigent civil litigants need counsel appointed in order to have fundamentally fair hearings. They are not doing so. Thus, this rule is necessary.

A Court-funded pilot project will generate information, including the cost of appointing counsel, which will be useful to the Court and the Wisconsin justice system in general.

Therefore, petitioners respectfully ask that the Wisconsin Supreme Court grant our petition.

Dated: September 30, 2013

Respectfully submitted,



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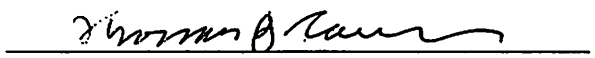

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