



WISCONSIN LEGISLATIVE COUNCIL

Access to Civil Legal Services

Room 413 North (the G.A.R. Room)
State Capitol, Madison, WI

September 14, 2016
10:00 a.m. – 4:00 p.m.

[The following is a summary of the September 14, 2016 meeting of the Study Committee on Access to Civil Legal Services. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Horlacher called the meeting to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Representative Cody Horlacher, Chair; Senator Duey Stroebel, Vice Chair; Representatives Joan Ballweg, Amanda Stuck, and Lisa Subeck; Senator Robert Wirsch; and Public Members Erin Boyd, Rick Esenberg, James Gramling, Kimberly Haas, Gregg Moore, David Pifer, David Prosser, Michael Rust, Amy Wochos, and Glenn Yamahiro.

COUNCIL STAFF PRESENT: David Moore, Senior Staff Attorney, and Rachel Snyder, Staff Attorney.

APPEARANCES: Colonel David Dziobkowski, Staff Judge Advocate, Wisconsin National Guard; Jill Kastner, Attorney, Legal Action of Wisconsin; Kristy Bradish, Retired Executive Director and Volunteer Mediator, Winnebago Conflict Resolution Center, Inc.; Jim Sandman, President, Legal Services Corporation; and the Honorable Paul Van Grunsven, and the Honorable Mike Skwierawski, Milwaukee County Circuit Court.

Approval of the Minutes from the July 27, 2016 Meeting

Mr. Prosser moved, seconded by Mr. Moore, that the minutes of the July 27, 2016 meeting be approved. The motion was approved by voice vote.

Presentation on Veterans' Access to Civil Legal Services

Jill Kastner, Attorney, Legal Action of Wisconsin

Ms. Kastner summarized the types of legal problems that she helps veterans with and also talked about how some of the legal services she provides are funded. She explained that much of her work is funded with money from a Supportive Services for Veteran Families (SSVF) grant through a partnership with the Center for Veterans Issues (CVI). CVI provides various services, including free legal services, to qualifying veterans who are homeless or at risk of homelessness. Ms. Kastner told the committee that the legal issues her clients most often need help with are related to: housing; disability benefits; driver's license recovery; family issues; consumer issues; employment; government debts; and public benefits. She also talked about the amount of unmet need for civil legal services among veterans and the types of cases Legal Action cannot take due to lack of resources. She suggested some possible ways this problem might be addressed, including providing additional funding for civil legal services for veterans, encouraging Veterans Affairs hospitals and other organizations that provide services to veterans to collaborate to provide on-site legal aid clinics, and requiring SSVF grantees to collaborate with legal aid providers.

Colonel David Dziobkowski, Staff Judge Advocate, Wisconsin National Guard

Colonel Dziobkowski explained what the Wisconsin National Guard and the Department of Military Affairs (DMA) are able and unable to do with respect to the civil legal service needs of veterans in Wisconsin. He told the committee that the primary duties of the judge advocates in the National Guard and DMA are to assist commanders in fielding a disciplined force, advise on military justice, and advise on operational issues, and train for their wartime mission. However, federal rules and regulations, also require judge advocates to provide legal assistance to members of the National Guard. As the only full-time installation in the state, the judge advocates also provide services to active-duty and reserve military personnel who are in the state. Colonel Dziobkowski explained that there are significant limitations to the ability of the judge advocates to provide civil legal services to military personnel. For example, the judge advocates can only provide services to specified individuals, services can only be provided on topics judge advocates have expertise on, and services can only be provided to the extent the office has resources to provide those services. The judge advocates prioritize legal help to service members going overseas, and also offer legal services, such as will drafting, at other specified times, but Colonel Dziobkowski emphasized the judge advocates are unable to meet all of the civil legal service needs of service members.

Presentation on Alternative Dispute Resolution

Kristy Bradish, Retired Executive Director and Volunteer Mediator, Winnebago Conflict Resolution Center, Inc.

Ms. Bradish gave a brief overview of the Winnebago Conflict Resolution Center (Center) and explained how it operates. She told the committee the Center is a 501 (c) (3) nonprofit organization that has an advisory board comprised of various stakeholders and members of the community, and is headed by an executive director. She said the Center has a budget of approximately \$100,000 per year. Approximately 70 percent of that is covered by grants, including a grant from the Winnebago Circuit Court's judicial administrative budget. The remainder is earned by the Center's director, who conducts trainings on mediation. She explained that volunteer mediators, of which there are about 50, mediate between 450 and 500 cases per year. The types of cases mediated include small claims, some large claim civil cases, evictions, probate, adult guardianship, divorce and post-divorce property division, probate, and harassment restraining orders. She told the committee that the benefits of mediation through the Center are that it is generally free to the parties, faster than the formal legal system, less formal, and not limited by legal remedies. She said that the mediators guide parties to a mutually acceptable solution that is focused not just on the issue that led to the mediation but also on how issues will be addressed in the future. Ms. Bradish suggested that the committee consider using the Center as a model to create similar programs in other counties. She also suggested that counties might be able to provide some funding for programs such as these because counties are currently required to provide custody and placement mediation.

Presentation on Funding Civil Legal Aid

Jim Sandman, President, Legal Services Corporation

Mr. Sandman explained that the Legal Services Corporation (LSC) is the single largest funder of civil legal services in the country, funding 134 separate organizations that together provide legal services to every county in every state in the country, plus the District of Columbia and Puerto Rico. He discussed the importance of ensuring that individuals who need a lawyer to help with legal issues that implicate the fundamentals of life – such as housing, employment, and the ability to care for one's family and children – have access to legal services.

Mr. Sandman then offered three different measures of the "justice gap": the gap between the number of people in need of legal services who cannot afford an attorney, and the resources available to those people. The first measure he offered is the difference between the size of the population financially eligible for civil legal services and the funding available for those services. He explained that there are currently 62 million people, or approximately one-fifth of the American population, that are eligible for free legal services. To be eligible for free legal services, a person's income can be no more than 125% the federal poverty limit. He told the committee that the number of people eligible for free legal services is near an all-time high and is about 20% higher than it was in 2007. However, he said that as the number of individuals eligible for free legal services has increased, the funds available per financially eligible person, adjusted for inflation, has gone down.

The second measure of the justice gap he offered is the “turn-away rate,” which he described as the rate at which people who are eligible to receive legal services from an LSC-funded organization and seek help from one of these organizations are turned away because the organization lacks resources to provide those services. He explained that this too is significant and has been increasing. The third measure of the justice gap he offered was the number of people who appear in courthouses without a lawyer because they cannot afford to pay for one. He said that there are no reliable national statistics on this, but that it is common for more than 95% of tenants to have no lawyer in an eviction case, for defendants in foreclosure cases not to have a lawyer, and for parties in child support cases not to have a lawyer. He said that this is a problem because when an unrepresented litigant goes into a court room, he or she is confronted with a system that was constructed by lawyers, for lawyers, on the assumption that every litigant has a lawyer. The language of the law, rules of civil procedure, and rules of evidence, he said, were all designed with lawyers in mind.

Mr. Sandman told the committee that in Wisconsin, and nationally, the largest need for legal aid is family law and the second largest need is in housing-related issues. Finally, he suggested the following three avenues for addressing the need for civil legal services: increasing funding for these services; maximizing the contributions of the private bar; and exploring creative uses of technology.

Presentation on Pro Se Litigation

The Honorable Paul Van Grunsven, Judge, Milwaukee County Circuit Court

Judge Van Grunsven began his presentation by describing the steps that need to occur when someone is initiating a court proceeding and the challenges pro se litigants face when completing these steps. He told the committee that the person needs to file in the right county, name all of the correct parties, properly serve process, and pay the required fees, and all of these steps may be challenging for someone who is unfamiliar with the legal system. Judge Van Grunsven then explained that the obstacles for pro se litigants continue after the case is filed. For example, in family law cases, the parties must fill out a financial disclosure form, which employs terms and concepts a pro se litigant may not be familiar with and may be difficult for a pro se litigant to complete. Pro se litigants, in family court, are also less likely to be familiar with specific family law cases, such as parent education classes and the requirement for a guardian ad litem in certain cases. Judge Van Grunsven told the committee that another challenge courts face when dealing with pro se litigants in family court is that if one of the parties has obtained a restraining order against the other party, there is no way for the parties to communicate outside of court, so all of the issues parties’ lawyers would otherwise work out outside of court can only be resolved in open court. Finally, Judge Van Grunsven told the committee that pro se litigants are less likely to be familiar with the elements judges are statutorily required to consider—for example, when awarding maintenance and dividing property—and so are less likely to be able to articulate information the judge needs. It is particularly important to be familiar with statutorily required elements and procedures in cases involving children, he said, to assist the judge in doing what is in the child’s best interest.

The Honorable Mike Skwierawski, Retired Chief Judge, Milwaukee County Circuit Court

Judge Skwierawski provided some background on the Milwaukee Justice Center (MJC), describing how it was formed and how it operates. He explained that there are three main stakeholders that operate the MJC: Milwaukee County; the Milwaukee Bar Association; and Marquette Law School. MJC relies on volunteers and law students to help people with legal information at its clinics, five major law firms staff these clinics on a regular basis. Judge Skwierawski explained that MJC serves over 10,000 people every year, and the majority of these cases are family related. He told the committee that he believes the MJC is a model public/private partnership and a good example of how various stakeholders and the private bar can come together to help address the needs of people who need legal help but cannot afford to pay for it.

Discussion of Committee Assignment

Chair Horlacher began committee discussion by asking each member to give his or her thoughts on how the committee should focus its efforts and any ideas each member has for how the committee should carry out its charge. In response to suggestions by a number of committee members that the committee explore how mediation programs, such as the Winnebago County mediation program, could be used in other counties, Chair Horlacher directed committee staff to prepare an options paper on this topic. A number of committee members also suggested the committee focus on identifying possible funding sources for civil legal services and asked for information about current court fees and possible sources of funding from federal block grants. Chair Horlacher directed committee staff to prepare this information for the committee's next meeting. Some committee members also asked that Karen Lash, Deputy Director of the U.S. Department of Justice's Access to Justice Office, be invited to address the committee. Chair Horlacher explained that an invitation had been extended but Ms. Lash was unable to come to either the September or October meetings. However, he directed committee staff to contact Ms. Lash to assess her availability to address the committee in November.

Other Business

There was no other business.

Plans for Future Meetings

Chair Horlacher has scheduled the next meetings for Wednesday, October 12, and Monday, November 14, 2016.

Adjournment

The meeting was adjourned at 4:00 p.m.