

Legal Aid Groups Seek Increase to Annual Fee Assessed to Wisconsin Lawyers

A petition before the Wisconsin Supreme Court – filed by eight organizations, including the Wisconsin Access to Justice Commission – asks the court to increase the \$50 fee that lawyers pay toward the public interest legal services fund, to \$75, then \$100.

Most lawyers would probably agree that adequately funding legal aid organizations to represent low-income individuals and families is positive for Wisconsinites and the court system. The real question is, who should pay for it?

In “Legal Aid Groups Seek Increase to Annual Fee Assessed to Wisconsin Lawyers” (*InsideTrack*, Oct. 2, 2024), available at <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=16&Issue=18&ArticleID=30658>, Joe Forward explores the history of the Public Interest Legal Services Fund (PILSF), how it is funded, and the petition (24-05).

The petitioners recently asked the State Bar of Wisconsin’s 53-member Board of Governors, the organization’s policy-making body, to support the petition. At its September meeting, the board heard an initial presentation of the petition request and discussed the petition at length, but took no action. The board is likely to vote at its December meeting, either opposing the petition, supporting it, or voting to take no position.

Readers in support and in opposition to the petition weighed in.

Reader response in support: As attorneys, we have an invaluable skill set: the ability to navigate a complex legal system to advocate for justice. With this privilege comes the responsibility to ensure that justice is accessible to all, not just those who can afford it. This is why I urge my fellow attorneys to support Supreme Court Petition 24-05. Doing so is not just a charitable gesture – it is a professional duty and an opportunity to lead by example in shaping a more just legal system.

Civil legal aid provides critical services to individuals who cannot afford legal representation. Our organizations help with issues like housing, domestic violence, consumer rights, and healthcare access. Without civil legal aid, countless individuals and families would be left to face these challenges alone, often resulting in devastating consequences such as homelessness or loss of basic human rights.

As attorneys, we are bound by the ethical principle that justice should be available to all, regardless of socioeconomic status. Wisconsin Supreme Court Rule 20:6.1 encourages attorneys to provide at least 50 hours of pro bono legal services every year, particularly to people who cannot pay, and to provide financial support to legal aid organizations. The Public Interest Legal Services Fund (PILSF) is a small way

all attorneys can contribute toward this ethical directive. A modest increase in the PILSF assessment, that amounts to less than half of the average billable hour in Wisconsin, would have a profound impact on the ability of legal aid organizations to provide critical legal services.

While many lawyers are already engaged in pro bono work, the legal needs of low-income Wisconsinites far outpace the availability of free or low-cost services. As executive director of a legal aid organization serving half our state, I assure you we operate on a shoestring budget, and we are forced to turn away three of every five eligible applicants due to lack of resources. By contributing financially, we can ensure these vital services remain available to our neighbors living in poverty.

Supporting civil legal aid is an act of leadership. The legislature looks to our profession as a benchmark for how justice is administered and prioritized in society. By showing that we are willing to invest in civil legal aid, attorneys send a powerful message that access to justice is not just an ideal but a shared responsibility. Our support demonstrates to lawmakers that funding for legal services is an urgent and necessary public investment, one that protects the most vulnerable members of society and ensures fairness in our legal system.

Please support Petition 24-05 by asking your State Bar board representative to vote in support of the petition at the Dec. 6, 2024, board meeting, and consider writing your own letter in support. PILSF is a direct way to fulfill our professional responsibility and lead the charge for a more just and equitable society.

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Reader response in opposition: Lawyers are required to pay a \$50 annual fee to a Wisconsin Trust Account Foundation (WisTAF) fund, the Public Interest Legal Services Fund (PILSF), that makes grants funding civil legal services for needy clients. The supreme court adopted the fee in 2005 as a rule. At the time, the State Bar Board of Governors voted to oppose it and alternatively suggested an opt-out PILSF contribution. I was on the board in 2004-08 and am currently on the board. I was then, and remain, opposed to the PILSF fee. In July, a petition was filed with the supreme court by PILSF-grantee organizations and others to increase the annual fee to \$75 in 2025 and \$100 in 2027.

Funding civil legal services for indigent and low-income individuals is a compelling public need. But that’s just it – it is a *public* need. The PILSF fee is not for a cost of the legal profession, unlike the client protection fund, the Office of Lawyer Regulation, or Board of Bar Examiner fees, which Wisconsin lawyers pay annually as a condition of practicing law. Because it is imposed to fund a public purpose, the PILSF fee is a tax. However, under the Wisconsin Constitution, only

the legislature can tax citizens; the supreme court has no authority to impose taxes. I oppose the PILSF fee because it is an unconstitutional tax.

Since the supreme court adopted the PILSF fee in 2005, its constitutionality has never been determined. It has never been challenged in court or determined to be constitutional in a case.

It is the role of the legislature to fund the gap in civil legal services funding. This is a vitally important public need that should be borne by all Wisconsin taxpayers. Wisconsin lawyers should contact their assemblypersons, senators, and the governor to urge them to address the unmet need for legal services funding.

As a policy matter, the consequences of this funding gap should not be borne solely by lawyers. Wisconsin lawyers are community leaders who perform pro bono or reduced-fee work for people in their communities. They serve as volunteers and donors for community and charitable organizations throughout our state. Also, many lawyers are solo practitioners operating with tight margins. The PILSF fee may be an undue financial burden for them. Additionally, as a mandatory bar, it raises First Amendment concerns to require Wisconsin lawyers to make forced donations. Lawyers may prefer to donate to other causes instead of WisTAF-funded organizations. I am a

member of two other mandatory bars, Georgia and California. Both have suggested donations on annual fee statements, which lawyers may increase or reduce. Other state bars with mandatory PILSF donations are voluntary bars, for example, Minnesota and Illinois. Lawyers can choose not to belong to those organizations. Thus, the fee is not compulsory.

The board will consider the PILSF fee-increase petition on Dec. 6, and comments may be filed with the supreme court through Dec. 13. Please contact your board member(s) or file a comment with the court to voice your opinion.

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