

NEED AN ATTORNEY IN YOUR CIVIL CASE?

If you are involved in a civil court case, are low-income, and you do not have an attorney because you can't afford one, you have a right to ask the judge to appoint an attorney for you. It is up to the judge whether they appoint an attorney for you. You do not have a right to an attorney, but you do have a right to ask the court for one. If you wish to do so, you can use these motion papers to ask the court appoint an attorney for you. Read the instructions carefully, fill out the papers to the best of your ability, and file the papers with the court. You should file this motion as soon as possible and before your return date or trial date. The packet contains the following four documents:

- Notice of Motion and Motion for Appointment of Counsel
 - Affidavit in Support of Motion for Appointment of Counsel
 - Memorandum in Support of Motion for Appointment of Counsel
 - Proposed Order
-

How to Fill out the Paperwork

1. Notice of Motion and Motion for Appointment of Counsel

- Fill in the caption.
 - At the top fill in the County;
 - Name of the case, for example, "Joan Smith v. John Jones"; and
 - Case Number.You can take this information from other papers in your case.
- In the TO: section, enter the name and address of the other party, or if the other party is represented, their attorney. You will need to serve all of the papers on each person that you put in the TO: section.
- Sign and date the Motion.

2. Affidavit in Support of Motion for Appointment of Counsel

- Fill in the caption.
 - At the top fill in the County;
 - Name of the case, for example, "Joan Smith v. John Jones"; and
 - Case Number.
- Insert the name of the county in which you will be signing the document.
- Fill in the rest of the information. Be very careful that all the information is correct, as you will be swearing under oath that all the information is true.

- If the information called for does not apply to you or you don't know, leave it blank.
- DO NOT SIGN the affidavit until you are in front of a notary public who has asked you if you swear that the information is true. You can find a notary public at a law office or a bank. When the notary public swears you in, sign it IN FRONT OF THE NOTARY, and put in the date and your address. Have the notary sign it.

3. Memorandum in Support of Motion for Appointment of Counsel

- You don't have to sign this. Just file and serve it with the rest of the packet.

4. Proposed Order

- Fill in the caption.
 - At the top fill in the County;
 - Name of the case, for example, "Joan Smith v. John Jones"; and
 - Case Number.
- DO NOT FILL IN THE REST – this is for the judge to complete when they decide whether to grant your motion.

How to File the Paperwork in Person

- Make Copies** – Once you have completed the paperwork, you should make copies of the paperwork. You will need to file the original with the clerk of courts. You will need at least one copy for yourself, and one copy for all of the parties in the case.
- File Paperwork** – Take the originals and the copies to the courthouse. The clerk will file the original and provide you with stamped, authenticated copies of the paperwork.
- Mailing Paperwork** – Once the paperwork has been filed, you will need to mail authenticated copies of the paperwork to all of the parties in the case. You should keep an authenticated copy of the paperwork for your records.

How to File the Paperwork by Mail

- Make Copies** – Once you have completed the paperwork, you should make copies of the paperwork. You will need to file the original with the clerk of courts. You will need at least one copy for yourself, and one copy for all of the parties in the case.
- Mail Paperwork** – You should write a cover letter to the clerk of courts requesting that the paperwork be filed. Along with the letter, the paperwork and copies, you should include a self-addressed, stamped envelope so the clerk can mail the authenticated copies back to you. The clerk should file the original and provide you with stamped, authenticated copies of the paperwork.

- ❑ **Mailing Paperwork** – Once the paperwork has been filed, the clerk will mail it back to you in the self-addressed, stamped envelope you provided. Once you received these copies back, you will need to mail authenticated copies of the paperwork to all of the parties in the case. You should keep an authenticated copy of the paperwork for your records.
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If you encounter problems filing the paperwork, you should contact the Legal Action office which handles cases in the county your case is in. If a judge denies your motion for appointment of counsel, there is a very short deadline of fourteen (14) days if you would like to file an appeal of the judge's decision with the Court of Appeals.

Legal Action of Wisconsin, Inc.

Milwaukee Office (414) 278-7722/ (888) 278-0633
230 West Wells Street, Room 800, Milwaukee, WI 53203-1866
Milwaukee and Waukesha Counties

Madison Office (608) 256-3304/ (800) 362-3904
31 South Mills Street, Madison, WI 53715
Columbia, Dane, Dodge, Green, Iowa, Jefferson, Lafayette, Rock, and Sauk Counties

Racine Office (262) 635-8836/ (800) 242-5840
4900 Spring Street, Suite 100, Racine, WI 53406
Kenosha, Racine, and Walworth Counties

Green Bay Office (920) 432-4645/ (800) 236-1127
201 West Walnut Street, Suite 203, Green Bay, WI 54303
Brown, Calumet, Door, Kewaunee, Manitowoc, and Outagamie Counties

Oshkosh Office (920) 233-6521/ (800) 236-1128
404 North Main Street, Suite 702, Oshkosh, WI 54901
Adams, Fond du Lac, Green Lake, Marquette, Ozaukee, Sheboygan, Washington, Waushara, and Winnebago Counties

La Crosse Office (608) 785-2809/ (800) 873-0927
205 Fifth Avenue S, Suite 300, La Crosse, WI 54602-2617
Buffalo, Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau, and Vernon Counties

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

_____ COUNTY

_____,
Plaintiff,

Case No. _____

-vs-

_____,
Defendant.

**NOTICE OF MOTION AND MOTION
FOR APPOINTMENT OF COUNSEL**

TO: _____

1. Please take notice the Plaintiff/ Defendant moves the court for an order appointing counsel to represent her/him.
2. The bases for the motion, as further set forth in the attached Affidavit and Memorandum, are:
 - a. This court has the inherent power to appoint counsel in civil cases, as is further set forth in the attached Memorandum.
 - b. I am not an attorney, and I cannot afford to hire an attorney, as is set forth in the attached Affidavit.

Dated this ____ day of _____, 201__

Signature

Prepared by the law firm of Legal Action of Wisconsin, Inc. in order to assist pro se litigants.
This document was prepared with the assistance of a lawyer.

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

_____ COUNTY

Plaintiff,

Case No. _____

-vs-

Defendant.

**AFFIDAVIT IN SUPPORT OF MOTION
FOR APPOINTMENT OF COUNSEL**

STATE OF WISCONSIN
_____ COUNTY

The Plaintiff/ Defendant , _____, being first duly sworn, deposes and says:

1. I am not represented by an attorney in this case, as I cannot afford to hire one.
2. The opposing party in this case is / is not represented by an attorney.
3. I need an attorney to represent me in this case, as I do not know enough about the law to represent myself.
4. My educational level is:_____.
5. I currently receive the following benefits:

<input type="checkbox"/> Supplemental Security Income.	<input type="checkbox"/> FoodShare/Food stamps.
<input type="checkbox"/> Veterans benefits.	<input type="checkbox"/> Public assistance.
<input type="checkbox"/> Medical assistance.	
6. I am / am not employed.
7. I earn \$_____ gross weekly / every 2 weeks / twice monthly / monthly.
My take home pay is approximately \$_____ Per pay period.

8. I receive non-employment monthly income totaling:
- Social Security \$ _____ Pension \$ _____
- Disability \$ _____ Student loans or grants \$ _____
- Unemployment Compensation \$ _____ Other \$ _____

9. I have the following cash assets:
- Savings and checking accounts \$ _____ Cash \$ _____

10. I have the following non-cash assets:
- Vehicle - year and make: _____ Value \$ _____
- Household furnishings \$ _____
- Equity in real estate \$ _____
- Other individual assets valued at over \$200 each:
- i. _____
- ii. _____
- iii. _____

11. My household consists of me and ___ others, who have the following relationship to me:
- _____
- _____
- _____
- _____ of these persons are under 18 years of age.

12. The other members of my household have monthly income in the following amounts from the following sources:

	<u>Source</u>	<u>Amount</u>
<input type="checkbox"/>	_____	\$ _____
<input type="checkbox"/>	_____	\$ _____
<input type="checkbox"/>	_____	\$ _____

13. Only the following monthly income of other household members is available to me to pay for an attorney: _____
- _____

14. I have the following debts:
- | | <u>Amount</u> | <u>Monthly Payment</u> |
|---|---------------|------------------------|
| <input type="checkbox"/> Auto loan | \$ _____ | \$ _____ |
| <input type="checkbox"/> Credit cards | \$ _____ | \$ _____ |
| <input type="checkbox"/> Consumer loans | \$ _____ | \$ _____ |
| <input type="checkbox"/> Payday loans | \$ _____ | \$ _____ |
| <input type="checkbox"/> Other | \$ _____ | \$ _____ |

15. I have the following unusual expenses, other than ordinary living expenses:

Dated this ____ day of _____, 201__

Signature

Subscribed and sworn to before me
this ____ day of _____, 20____.

Notary Public or Court Officer
My commission expires_____

**MEMORANDUM IN SUPPORT OF MOTION
FOR APPOINTMENT OF COUNSEL**

In Wisconsin, the power to appoint counsel has traditionally been considered a judicial function. *Friedrich v. Circuit Court for Dane County*, 192 Wis. 2d 1, 18, n. 9, 531 N.W.2d 32, 38, n. 9 (1995) (citing cases). *Friedrich* involved the power to set compensation for court-appointed attorneys. The Wisconsin Supreme Court stated:

[C]ourts have the power to set compensation for court-appointed attorneys and are the ultimate authority for establishing compensation for those attorneys. The courts derive this power and ultimate authority from their duty and inherent power to preserve the integrity of the judicial system, **to ensure and if necessary to provide at public expense adequate legal representation**, and to oversee the orderly and efficient administration of justice. 192 Wis. 2d at 10, 531 N.W.2d at 34-35. Emphasis added.

In *Romasko v. City of Milwaukee*, 108 Wis. 2d 32, 321 N.W.2d 123 (1982), the Wisconsin Supreme Court reversed the Court of Appeals and the trial court in holding that Wis. Stat. § 753.19 obligated counties to pay the fees of guardians ad litem appointed by the courts. Our Supreme Court stated:

Hence, the appointment of a guardian ad litem is the sine qua non for the assurance of the validity of the procedures and the integrity of circuit court operations. A guardian ad litem fee is a necessary cost of the operation of the court; and, accordingly, where payment is not mandated by other specific provisions of the statutes, sec. 753.19, Stats., imposes that duty upon the county.

Id. at 42. Pursuant to *Romasko*'s reasoning, then, where counsel is appointed pursuant to the court's inherent power to preserve the integrity of circuit court operations, the county has the duty to pay the appointed counsel under Wis. Stat. § 753.19.

In *Joni B. v. State*, 202 Wis. 2d 1, 549 N.W.2d 411 (Wis. 1996), the Wisconsin Supreme Court stated “[t]his Court has repeatedly found that the judiciary’s power to appoint counsel is inherent,” and quoted *State ex rel. Fitas v. Milwaukee County*, 65 Wis. 2d 130, 134, 221 N.W.2d 902 (1974):

[T]he appointment of counsel ought to be made by a judge or under the aegis of the judicial system. Attorneys are officers of the court and the duty to furnish representation derives from constitutional provisions that place the responsibility on courts. That responsibility has traditionally been discharged by courts. **It is within the inherent power of the courts to appoint counsel for the representation of indigents.**

202 Wis. 2d at 9. Emphasis added. The Court also cited as authority for this principle *State ex*

rel. Chiarkas v. Skow, 160 Wis. 2d 123, 137, 465 N.W.2d 625 (1991) and *Contempt in State v. Lehman*, 137 Wis. 2d 65, 76, 403 N.W.2d 438 (1987).

In *State v. Lehman*, the trial court appointed standby criminal defense counsel for a defendant who had requested that he be permitted to appear pro se. Thus, standby counsel was not appointed pursuant to *Lehman's* constitutional right to counsel. In the section cited by the *Joni B.* court, the *Lehman* court stated:

The exercise of the court's discretion in invoking its inherent power to appoint counsel for an indigent is not tied to any constitutional right that the indigent may have to counsel. The trial court has the authority to appoint counsel whenever in the exercise of its discretion it deems such action necessary.

137 Wis. 2d at 76.

Having held the appointment of standby counsel appropriate, the *Lehman* court relied on *Romasko* in holding that counsel's fees were a necessary cost of the operation of the court and must be paid by the county under Wis. Stat. § 753.19. *Id.* at 83. Furthermore, the power to order Douglas County to pay the fees was part of the court's incidental powers, and the court could order payment ex parte, without commencing a separate action. *Id.* at 86-87.

Chiarkas involved the appointment of counsel in mental commitment proceedings, a category of civil cases. In the section cited by the *Joni B.* court, the *Chiarkas* court quoted the *Lehman* decision:

This court has explicitly stated that courts possess the inherent power to appoint counsel: "It is within the inherent power of the courts to appoint counsel for the representation of indigents." . . . We further stated, "[t]he trial court has the authority to appoint counsel whenever in the exercise of its discretion it deems such action necessary."

160 Wis. 2d at 137. The *Chiarkas* court, like the *Lehman* court, held the county must pay the attorney's fees under Wis. Stat. § 753.19, and relied on both *Romasko* and *Lehman*. *Id.* at 140.

Thus, it is clear that the circuit courts have full discretion to appoint counsel where necessary to protect the integrity of the court, including the court's ability to assure fundamental fairness in its proceedings. Furthermore, appointed counsel is a cost of operating the court under Wis. Stat. § 753.19 and must be paid by the county. Civil litigants have a due process right to procedures which provide an opportunity to be heard at a meaningful time, in a meaningful manner, and to a hearing which is fundamentally fair.

The Wisconsin Supreme 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), the Court began its analysis:

[W]ith 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.

The 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 added. “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. The Court then engaged in this analysis in the *Piper* case, at 649-650.

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

The *Joni B.* 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. The 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. Emphasis added. The Court in *Joni B.* reaffirmed 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, 238 Wis.2d 516, 532-533, 617 N.W.2d 894, 901-902.

Further, the Wisconsin Supreme 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. *Joni B.* 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.” *Xena X.* at ¶32

Among the factors that the Supreme Court recommended that the Circuit Courts consider were the personal characteristics of the party, such as age, mental capacity, education and former contact with the court, and the complexity of the case, including the likelihood of the introduction of medical or psychological evidence. *Joni B.* at 19. Movant asserts that the representation of opposing parties by counsel should also be considered. The Wisconsin Supreme Court has affirmed the inherent power of the circuit courts to appoint counsel in civil cases and emphasized the holdings of *Piper* and *Joni B.* as recently as 2012. Supreme Court Order 10-08, *In the matter of the petition to establish a right to counsel in civil cases* (2012).

The movant in this case requests this Court make an individualized determination as to whether the facts of this case necessitate the appointment of counsel to ensure fundamental fairness. The movant contends that they do, and requests that this Court exercise its inherent power to appoint counsel to represent movant in this proceeding.

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

_____ COUNTY

_____,
Plaintiff,

Case No. _____

-vs-

_____,
Defendant.

**ORDER ON MOTION
FOR APPOINTMENT OF COUNSEL**

IT IS HEREBY ORDERED that the motion of the Plaintiff/ Defendant for an order appointing counsel to represent her/him in this action is hereby:

- GRANTED for the reasons as stated on the record.
Attorney _____ shall be appointed to represent the
 Plaintiff/ Defendant for the duration of the above-entitled action, at no cost to her/him so long as she/he remains unable to pay counsel.
- DENIED for the reasons as stated on the record.

Dated this ____ day of _____, 201__

Circuit Court Judge