

ASSEMBLY BILL 204/SENATE BILL 214

Because Legal Action of Wisconsin (“LAW”) has attorneys who specialize in representing low-income litigants in municipal courts, one of your legislative colleagues invited LAW to provide information on how this proposed legislation might impact our clients, including our thoughts on any unintended consequences of the legislation in its current form. Overall, Assembly Bill 204/Senate Bill 214 will benefit LAW clients by clarifying laws and procedures. However, there are three sections of the proposed legislation that we believe might have negative, unintended consequences:

1. ***Section 28 provides the beginning of a helpful framework for decisions about motion costs, but it might have the unintended consequences of creating confusion about how to harmonize the new provisions with existing parts of the code of municipal procedure***
 - This section, as written, improves the current law by clearly setting forth two appropriate considerations for judges imposing motion costs—a party’s ability to pay and the cost of the expense associated with the motion. However, the new legislation does not reference Wis. Stat. § 814.29—which is used throughout Chapter 800 to set the criteria for determining ability to pay—and thus might be construed as suggesting that motion cost decisions should be based on different criteria than other ability to pay determinations.
 - This ambiguity would be eliminated if the legislation clearly stated that the court shall consider the defendant’s ability to pay under s. 814.29(1)(d).

2. ***Section 34 clarifies certain aspects of the process for municipal court appeals, but does not clearly address the circuit court’s authority to stay municipal decisions that are being appealed***
 - This section, as written, changes the current requirement that a municipal order be stayed pending appeal, allowing a municipal court to immediately impose its decision despite a pending appeal. A circuit court judge has the authority to overturn the municipal court’s decision, but that authority is not explicitly laid out in the text of the proposed legislation.
 - To avoid confusion, the legislation could add that on motion, the circuit court can review the municipal judge’s decision and can overturn, for good cause, the municipal court’s order to impose the decision pending appeal.

3. ***Section 44 creates potential problems for attorneys representing indigent municipal defendants, particularly homeless and mentally ill defendants***
 - This section, as written, allows prosecutors to serve a subpoena on a defendant through counsel, without counsel’s consent, creating potential problems for attorneys representing indigent, homeless, and mentally ill clients whose movements can be difficult to track.
 - If this provision is intended to make it easier for municipal prosecutors to insure the appearance of out-of-state defendants, that end could be accomplished more directly by revising Wis. Stat. § 885.04 to allow a municipal judge to subpoena out-of-state witnesses to appear by phone or video with a finding of good cause.