



# CODY HORLACHER

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March 14<sup>th</sup>, 2019

Chairman Ott and Assembly Judiciary Committee Members,

Thank you for holding a Public Hearing on AB 25 related to allowing district attorneys, deputy district attorneys, and assistant district attorneys to engage in the private practice of law for certain civil purposes.

AB 25 is one of three bills that were put forward by the Legislative Council Study Committee on Access to Civil Legal Services. This bill passed unanimously through the 2016 Access to Civil Legal Services Study Committee as well as the Joint Legislative Council Committee, this Assembly Committee and the Senate Judiciary & Public Safety Committee last session, and the Assembly Floor last spring.

This bill simply allows district attorneys, deputy district attorneys, and assistant district attorneys to provide legal services to a person of limited means or to a charitable, religious, civic, community, governmental, or educational organization if the attorney provides the services without a fee and the services are not in conflict with the interests of the district attorney's county.

AB 25 supports the effort to offer legal services to vulnerable populations in Wisconsin. Currently district attorneys, deputy district attorneys, and assistant district attorneys are prohibited from providing pro-bono legal services. This bill does not mandate that these attorneys engage in this type of work, it simply allows them to do so.

During our discussion as a study committee we identified various ways to address the need for civil legal services and we need to utilize every available resource to do so. It is clear that there is a need for civil legal services for indigent populations and we need a multi-faceted approach to tackle this issue statewide. We should allow those who are closest to the people work to address the needs of their communities.

I appreciate your consideration of this bill and I would be happy to answer any questions you may have.



# Van H. Wanggaard

## Wisconsin State Senator

### TESTIMONY ON ASSEMBLY BILL 25

Thank you Mr. Chairman and committee members for today's hearing on Assembly Bill 25, which allows district attorneys and other prosecutors to provide limited free legal services to civic organizations. This bill was the unanimous product of a Legislative Council study committee a few years ago, and passed the Assembly unanimously last year, but we ran out of time in the Senate. It did pass the Senate Committee unanimously as well.

Current law prohibits a district attorney from engaging in "private practice." This mostly makes sense, as you don't want a prosecutor to serve two masters. They serve the state.

However, like many public servants, district attorneys are involved in their community beyond their official duties. They may belong to a church, a PTA, or Kiwanis, etc. Their involvement in these civic organizations benefits the public by demystifying the justice system. By being a member of these groups, group members and their circles of influences have a human face and informal relationship with the justice system, which helps build trust in the judicial system.

This bill would allow prosecutors to provide free civil legal services to civic organizations or persons of limited means so long as there is no conflict with counties. This bill does not allow a prosecutor to defend someone for free, or allow one to get involved in a child support case, for example. Those would be examples of conflicts. But if someone needs a contract or lease reviewed, a church needs legal services, or an organization needs bylaws, for example, there is no reason why a prosecutor should be prohibited for helping those groups if they desire. No prosecutor is forced to be involved civically or provide legal services, but if they would like to, they could under this bill.

Let's also make something clear -- we're talking about pro bono services. No one is going to supplement their income through this bill, and no one is going to get rich. The bill prohibits a prosecutor from seeking a fee for these extra-curricular services. All legal ethics, including conflicts and competency, still apply.

In short, this is a common sense bill that will help keep and build faith in the judicial system and expand access to legal services. I hope we can continue the unanimous legislative support for this bill and get it to the Governor this spring.

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**To:** Members, Wisconsin Assembly Committee on Judiciary  
**From:** Andrew Cook, Executive Director, Wisconsin Civil Justice Council  
**Date:** March 14, 2019  
**Re:** **Opposition to Assembly Bill 25**

Thank you, Chairman Ott and Committee Members, for the opportunity to testify on Assembly Bill 25, which allows district attorneys, deputy district attorneys, and assistant district attorneys (hereinafter collectively referred to as “DAs”) to engage in the private practice of law for certain civil purposes. The Wisconsin Civil Justice Council (“WCJC”), which is a broad coalition of groups that support civil liability reform, opposes Assembly Bill 25.

Current Wisconsin law explicitly prohibits a full-time district attorney, deputy district attorney, or assistant district attorney from engaging in the private practice of law.<sup>1</sup> WCJC thinks this is good public policy for a few reasons. First, if an attorney is a full-time employee paid by Wisconsin taxpayers, their first and foremost obligation is to work for the taxpayers. Second, allowing a governmental attorney the opportunity to moonlight as a private attorney, even in a pro bono capacity, creates a host of potential conflicts of interest. Therefore, the Wisconsin Legislature has wisely prohibited DAs from engaging in the practice of private law.

Assembly Bill 25, however, would reverse this sound public policy to allow DAs to provide pro bono legal services. Under the bill, pro bono legal services are defined as including legal services for individuals of “limited means, or for a charitable, religious, civic, community, governmental, or educational organization.” While AB 25 may be well-intentioned, WCJC believes it still poses the same conflict of interest issues, therefore we recommend the Legislature keep the current law as is.

A major concern is that under AB 25, a DA is allowed to be compensated for his or her legal services. The bill language provides that the DA is authorized to provide pro bono legal services “without fee or expectation of fee.” The second clause of the sentence clearly allows the DA to be compensated for his or her legal services.

A number of statutes allow attorney’s fees and costs if a plaintiff is successful in the lawsuit. Assembly Bill 25 clearly allows a pro bono attorney to be compensated for bringing one of these types of cases, which we think defeats the purpose of pro bono representation.

Lastly, AB 25 could lead situations where DAs provide pro bono legal services for interest groups as a means to influence public policy while being subsidized by Wisconsin taxpayers.

Wisconsin’s existing law prohibiting DAs from engaging in the private practice is sound public policy and prevents any potential conflicts of interest. While well-intentioned, Assembly Bill 25 creates a number of unintended negative consequences. Therefore, the Wisconsin Civil Justice Council respectfully opposes Assembly Bill 25.

<sup>1</sup> Wis. Stat. § 978.06.

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March 14, 2019

To: Assembly Judiciary Committee

Re: Opposition to AB 25/SB 29

The League of Women Voters of Wisconsin supports a system of justice that assures adults and juveniles equal treatment before the law. We oppose AB25/SB29 because we believe it will undermine that assurance.

While providing the opportunity for pro bono assistance to charitable institutions or organizations by lawyers is highly commendable, we do not think it is appropriate for District Attorneys, Deputy DAs or Assistant DAs. Public officials serve everyone in the public and there are certain standards that must be maintained to serve all of the public.

Allowing the opportunity for these officials to give free assistance to organizations or individuals could certainly raise the perception of favoritism or conflict of interest with the public. This weakens the belief in the assurance of equal treatment. In continuing to prohibit engagement in civil law or pro bono work, we protect the officials from any perception of impropriety and maintain the integrity of their offices. At a time when our public offices are being viewed with suspicion this is an important protection.

We applaud the encouragement of the law profession for its members to provide pro bono services for charitable organizations. This, however, is not appropriate for District Attorneys, Deputy DAs or Assistant DAs.

We oppose SB29/AB25 and ask you to oppose it as well.