

WISCONSIN SUPREME COURT ADVISORY COMMITTEE ON RULE PROCEDURES

REPORT AND RECOMMENDATIONS: SUPREME COURT'S RULE MAKING FUNCTION

May 2011

**REPORT AND RECOMMENDATIONS
OF THE RULE PROCEDURES COMMITTEE**

MAY 2011

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I. RULE PROCEDURES COMMITTEE – MEMBERSHIP & MEETINGS

In June 2010 the Wisconsin Supreme Court created an advisory committee to review and provide recommendations on the Supreme Court’s rule making process.

The members of the Rule Procedures Committee are:

Chief Justice Shirley S. Abrahamson
Wisconsin Supreme Court

Justice David T. Prosser, Jr.
Wisconsin Supreme Court

Justice Patience Roggensack
Wisconsin Supreme Court

Attorney Dean Dietrich
Wausau

Attorney Beth Hanan
Chair of Wisconsin Judicial Council, Milwaukee

Attorney Russ Whitesel
Legislative Council (retired), Madison

Attorney Lisa Roys
Public Affairs Director, State Bar of Wisconsin

Attorney Adam Korbitz
Government Relations Coordinator, State Bar of Wisconsin

Theresa Owens
Executive assistant to Chief Justice Abrahamson
Reporter, Rule Procedures Committee

The committee met on August 11, 2010, November 1, 2010, November 29, 2010, and April 8, 2011 in the supreme court hearing room.

II. INTRODUCTION

In preparing this report the committee analyzed different approaches to rule making, discussed efficiency factors and qualities that should be incorporated into the rule making process, identified tools to improve the quality of and consistency in rule petitions, and reviewed ten years of court statistics related to petitions for review, cases accepted, and rule petitions. This report encompasses the discussions of the committee. The justices serving on the committee participated in the discussions and made suggestions but reserved their final vote until the Supreme Court considers this report.

This report consists of four parts. The first part proposes a Mission Statement and Statement of Policy relating to the Supreme Court's rule making function. The remainder of this report summarizes three rule making structures the Supreme Court might consider for its rule making function, including a Judicial Policy Council, a Rules Advisory Board, and a modification of the present Supreme Court rule making structure. The recommendations focus on improving the efficiency and effectiveness of the rule making process. If the Supreme Court retains its present role in rule making, the committee proposes modifications to the Supreme Court's existing procedures on rule making. The committee proposes procedures and revised templates for a petition and memorandum in support of the petition.

The committee discussed whether comments should be solicited before the report was filed with the Supreme Court. The committee determined the report should be filed directly with the Supreme Court with the recommendation that the court consider holding a public hearing and open administrative conference on the proposals in the report.

The committee also recognizes that, if the Supreme Court adopts any recommendations in the report, the Rule-making provisions presently in Chapter III of the Supreme Court Internal Operating Procedures have to be revised and incorporated with those parts of the committee's report adopted by the court.

The committee recommends that the Supreme Court's final version of any rules governing the rule making process should be published as part of the court's Internal Operating Procedures or Supreme Court Rules and be available on the court's Web site.

The committee forwards this report with its recommendation to the Wisconsin Supreme Court for its review and consideration.

III. MISSION STATEMENT ON RULE MAKING FUNCTION

The purpose of the Wisconsin Supreme Court's rule making function is to assist the efficient and effective administration of justice, including simplification of processes and fairness in administration, and to promote the speedy determination of litigation upon its merits.

In the exercise of its powers and in accordance with Article VII of the Wisconsin Constitution and Wis. Stat. § 751.12, the Supreme Court may promulgate several categories of rules including all of the following: (1) Rules relating to pleading, practice and procedure in all judicial proceedings in all courts that do not affect substantive rights of litigants. (2) Rules relating to the administration of the courts. (3) Rules relating to regulatory matters. The Court will conduct rule making in an open, fair, timely, and efficient manner.

STATEMENT OF POLICY

- A. In promulgating rules, the Wisconsin Supreme Court seeks to ensure the following:
- 1) The Court's procedure on a rule petition should be open.
 - 2) The Court should provide an opportunity to comment on a rule petition.
 - 3) The Court should decide each rule petition that complies with SCR 1.05 by issuing an order.
 - 4) Any rule adopted should be clear and appropriate for statewide application.
 - 5) A rule adopted shall not abridge, enlarge, or modify the substantive rights of any litigant. Wis. Stat. § 751.12(1).
- B. To the extent possible, an agency or committee of the Supreme Court shall inform the Court of any potential rule petition.

IV. OPTION A: JUDICIAL POLICY COUNCIL

A Judicial Policy Council would serve as the policymaking body for the Wisconsin court systems and would assume the rule making and administrative authority currently held by the Supreme Court. Under this model the Supreme Court retains its adjudicative function but the authority over administrative matters and rules making governing the courts is vested in a judicial policy council. The committee discussed this structure in response to the concern of several justices that rule making is interfering with the court's adjudicative role. A Judicial Policy Council would have wide representation, including justices of the Supreme Court, judges of the court of appeals, the circuit, municipal, and tribal courts, the bar, a court administrator, a clerk of court, and the public.

The California judicial system provides a model for a Judicial Policy Council. California Constitution Article VI, Section 6, authorizes the judicial council to adopt rules for court administration, practice, and procedure that are not inconsistent with statutes. For further discussion of the California Judicial Council, see the California Judicial Branch Web site at <http://www.courts.ca.gov/policyadmin-jc.htm> (Profile and Fact Sheet of Judicial Council). A constitutional amendment appears necessary to effectuate this approach in Wisconsin.

V. OPTION B: RULES ADVISORY BOARD

The Supreme Court could rely on a rules advisory board or boards to assist the court in its rule making function. A rules advisory board could be responsible for proposing rules, receiving suggestions for rules, and conducting an in-depth review of all rule proposals, soliciting comments, holding public hearings, and making recommendations to the Supreme Court relating to rule proposals.

This approach to rule making does not appear to require any constitutional amendment. However, a question may arise whether an amendment to Wis. Stat. § 751.12 is required for a rules advisory board, rather than the Supreme Court, to hold public hearings for rules promulgated under § 751.12.

An Advisory Board may be structured in a variety of ways:

A. Single Advisory Board options:

- All members are judges
- Members are judges, public members, and lawyers

B. Multiple Advisory Boards:

- A Civil Advisory Board, a Criminal Advisory Board, an Appellate Advisory Board, and an Administration of Justice Advisory Board.
- A Pleading and Practice Advisory Board and a Regulation Advisory Board (Board of Bar Examiners, Office of Lawyer Regulation, Supreme Court Rules)

C. Ad hoc special Advisory Board

- An Advisory Board for a specific rule petition.

The Supreme Court has experience with the use of advisory committees, but of a different nature. The Wisconsin Judicial Council's role in rule making is to study and advise the Supreme Court as to the rules of pleading, practice and procedure, which will, in the council's judgment, simplify procedure and promote a speedy determination of

litigation upon its merits. The Supreme Court has convened study committees to advise it on specific issues or topics related to rule petitions. For example, the court created study committees on the Rules of Professional Conduct for Attorneys and the Code of Judicial Conduct. The Supreme Court also asked the State Bar of Wisconsin to study State Bar judicial membership classification and report back to the court with a recommendation. See Rule Order 08-27 & 06-09 (Nov. 24, 2009). The court's request for feedback was in response to rule petitions filed in 2006 and 2008. In each instance, the court has held public hearings and has felt free to revise the proposal of the study committee.

If the Supreme Court adopts a Rules Advisory Board model, then the details of the structure must be worked out, including membership, appointment process, terms of office, voting rights, staffing, content of materials to be submitted to the court, and, most importantly, the relationship of the Rules Advisory Board to the Supreme Court. Courts that have implemented an Advisory Board model ordinarily rely heavily on the Board's work in drafting rules, making recommendations, and promulgating proposed rules. See Peter G. McCabe, Renew of the Federal Rulemaking Process, 44 Am. U.L. Rev. 1655, 1674 & n. 97 (June 1995) (United States Supreme Court deferring to the Judicial Conference); Pound Civil Justice Institute, The Rule(s) of Law: Electronic Discovery and the Challenge of Rulemaking in the State Courts, 13 (Report of 2005 Annual Forum for State Appellate Court Judges) ("The vast majority of states have adopted some modified version of federal rulemaking."). Unless a court relies heavily on the Advisory Board, this model has the potential to create an additional tier in the rule making process that may duplicate and increase the number of procedures, delay the court's final decision

on the petition, generate additional work for court staff, and increase the costs to the petitioner and interested persons.

VI. OPTION C: MODIFY THE SUPREME COURT'S EXISTING RULE MAKING PROCEDURES

If the Supreme Court does not adopt a Judicial Policy Council or Rules Advisory Board approach to rule making, the committee recommends the Supreme Court consider modification of its existing rule making process. The committee noted that the legislative history of Wis. Stat. § 751.12 demonstrates the Supreme Court's long-standing role in the rule making process. The 1849 Wisconsin Revised Statutes provided:

The supreme court shall have the power to make, annul, alter, amend or modify any rule of practice of the circuit or supreme court, as they see fit, giving due notice thereof by publication. R.S. 1849, c. 82, § 4.

The Supreme Court may decide to modify and improve existing procedures in its rule making process. The committee considered several changes in procedures that may increase efficiencies, improve the quality of rule petitions, assist the court in its consideration of the petition, and provide more information to persons interested in rule petitions. The committee discussed the need for a rule petition to be properly drafted, for persons to have the opportunity to comment on a petition, and for all information about a pending rule petition to be readily accessible on the court's Web site.

As the committee has discussed modifications, Chief Justice Shirley S. Abrahamson has incorporated some of the proposals into the Supreme Court's existing rule making process to determine their effectiveness. For example, court staff now prepares a preliminary summary memo for the Court. The memo analyzes the form of the rule petition, identifies issues that may be helpful for the Court's consideration, and provides a recommendation regarding whether a hearing should be scheduled. The full

Court conducts a preliminary review of the petition and staff memo in an open administrative conference and determines the next steps.

The Chief Justice has implemented other changes suggested by the committee to improve communication with the petitioners and interested persons. During the initial screening of a petition the Supreme Court may send a letter to petitioner seeking additional information or clarification before the petition proceeds.

In addition, the web pages for the Supreme Court rules have been redesigned for easier navigation. The new web pages bring together in one place more detailed and complete information on rules, including copies of rule petitions, notices of public hearings or open administrative conferences, and archives of final court orders and rule petitions. Comments and responses filed with the Supreme Court after March 1, 2011 are available on the court's Web site.

Although the court has had an opportunity to test these modifications in recent months, its experience with these new procedures has been limited. The additional memo generated by court staff and extra time spent by the full court on a preliminary review of the petition may prove worthwhile and effective in increasing efficiency and improving the quality of the rule petitions and communication or may cause unwarranted delay without significant improvement in the process. The committee recognizes that the rule making should be open for further modifications as the Supreme Court's experiences justify.

The committee drafted a step-by-step procedure for rule making, creating a flow chart to illustrate the modified process, redesigning the template for a rule petition,

expanding the information that a petitioner must provide in a memorandum supporting the petition, and incorporating the cover sheet for the rule petition,

A. Procedures Governing Rule Making Process & Flow Chart: Appendix A

The committee drafted procedures that incorporate efficiencies and goals that it recommends should be incorporated into the rule making process. The procedures provide structure to the rule making process, set forth steps to file and respond to a rule petition, and explain the different actions the court may take throughout the process. The flow chart provides a visual road map of the proposed procedures.

B. Sample Petition: Appendix B

At the committee's initial meeting the members discussed the need to provide tools for persons interested in filing a rule petition with the court. The committee believes that a template for a rule petition may provide consistency, more information and detail about the proposed amendment, and clarify the requirements regarding the format and content of the rule petition. The sample petition would be available on the court's Web site.

C. Sample Memorandum in Support of the Petition: Appendix C

The committee identified the issues that a petitioner should address in a memorandum in support of a rule petition.

D. Cover Sheet for Rule Petition: Appendix D

On June 25, 2009, the Supreme Court adopted a cover sheet for rule petitions. The petitioner is required to answer the questions on the cover sheet and provide the court with specific information about the rule proposal. The cover sheet is available on the court's Web site. The committee did not change the cover sheet but included it in this report to give the court a complete picture of materials that are available to petitioners and the court.

APPENDIX A: PROCEDURES

PROCEDURES GOVERNING RULE MAKING PROCESS

1.01 Purpose

The purpose of these procedures governing the rule making process is to provide for the court's orderly and timely review of rule petitions; to provide for public notice and an opportunity for comment from members of the public, the court system, and the legal profession; to make a public record of all rule petitions; to govern pleading, practice and procedure in all judicial proceedings in all courts that do not affect the substantive rights of litigants; to assist the efficient and effective administration of justice; and to aid the court in performing its rule making responsibilities.

The court shall post these rules and other information, such as forms and contact information related to the rule making process on its Web site.

1.02 Definitions

In this chapter:

- (1) "Chief justice" means the chief justice of the supreme court of Wisconsin.
- (2) "Clerk" means the clerk of the supreme court of Wisconsin.
- (3) "Court" means the supreme court of Wisconsin.
- (4) "Rule" includes the following categories of rules promulgated by the supreme court:
 - (a) Rule relating to pleading, practice and procedure.
 - (b) Rule relating to the administration of the courts.
 - (c) Rule relating to regulatory matters, including governance of the State Bar, admission to the bar, governance of lawyers, and governance of judges.
- (5) "Rule petition" consists of a petition to create, amend or repeal a rule, a supporting memorandum, and a cover sheet.

1.03 Applicability

These procedures govern the court's rule making process. The court may deviate from the procedures governing its rule making process. Nothing in this chapter prohibits the court from enacting rules that it deems necessary on an emergency basis.

1.04 Initiating the Rule Petition

(1) *Filing.*

- (a) Any person may file with the court a rule petition.
- (b) The court, on its own motion, may file a rule petition or propose the review of a rule or issue an order to determine whether it is appropriate or necessary to file a rule petition.

(2) *Number.*

The petitioner shall file with the court 10 copies of a rule petition.

(3) *Electronic rule petition.*

(a) In addition to the copies required in sub. (2), the petitioner shall file with the court one copy of a rule petition in electronic form by forwarding the rule petition in a format determined by the court and designated on the court's Web site.

1.05 Content of Rule Petition

(1) *Requirements.*

A rule petition shall be filed with the clerk and shall include all of the following:

- (a) A petition.
- (b) A supporting memorandum.
- (c) A cover sheet form specified by the court.

(2) *A Petition*

(a) The petition shall adhere substantially to the form and style used by the Wisconsin legislature in the preparation of bill drafts. The petition shall set forth the text of any rule or part of a rule proposed to be created, amended or repealed. If the petition amends an existing rule, the entire text of the rule, or part of the rule, to be amended by the rule petition shall be included with the language to be removed shown as stricken through and language to be added shown as underlined. When new text will replace existing text, the stricken language shall precede the underscored language. If a rule or part of a rule is proposed to be repealed the rule petition shall designate the rule, or part thereof, to be repealed and shall include the text to be repealed.

(b) The petition shall cite the source of the court's authority to adopt the rule proposed.

(c) The petition shall contain the name of the petitioner requesting the rule and the petitioner's contact information, including phone number and email address.

(d) A sample petition is available on the court's Web site www.wicourts.gov

(3) *A Supporting Memorandum.*

(a) The supporting memorandum shall, at a minimum, address all of the following:

1. Explain whether the petitioner seeks to create, amend, or repeal a statute or rule.
2. Identify the statute or rule being created, amended, or repealed.
3. Provide a thorough, detailed explanation of each rule proposed and reasons therefor.
4. Explain how the rule proposed may affect procedural or substantive rights.
5. Identify experiences of other state or federal courts that have adopted or rejected identical or substantially similar rule petitions, if applicable.
6. Analyze any state or federal rule upon which the rule is based.
7. Analyze any fiscal and administrative impacts of the rule proposed.
8. List any related rule petitions pending before the court.
9. List any known previous action taken by the supreme court relating to the subject matter of the rule proposed.

10. Identify any related pending litigation in federal or state courts.
11. List any persons and entities that the petitioner has consulted about the rule petition.
12. List any known interested persons or entities.
13. Analyze how the rule proposed affects existing rules, statutes, or case law.
14. Include any request for a public hearing or a statement that no public hearing is necessary.
15. Justify any request for expedited consideration.

(4) *Cover Sheet.*

(a) The petitioner shall complete and file the cover sheet form adopted by the court.

(b) The cover sheet is available on the court's Web site www.wicourts.gov

1.06 Initial Processing of Rule Petition

(1) *Assignment.* A rule petition is assigned to a court staff member for analysis and reporting to the court.

(2) *Drafting comments.* Court staff may forward the rule petition to the Legislative Reference Bureau (LRB) for review and substantive and technical drafting comments. Court staff shall forward any LRB comments to the petitioner.

(3) *Web site.* The rule petition shall be posted on the court's Web site.

1.07 Screening of Rule Petition

(1) *Staff summary.* The court staff member under s. 1.06(1) shall prepare a summary of the rule petition for review, including whether the petition is in compliance with SCR 1.05.

(2) *Initial screening.* The chief justice shall review the rule petition to determine whether the proposal is clearly stated, has merit, is in the form required under this chapter, and has been discussed with interested persons or entities.

(3) *Request for information.* If the chief justice determines that a rule petition is unclear, lacks merit, fails to comply with SCR 1.04 to 1.05, or further information is needed from interested persons or entities, the chief justice may direct the court staff member under s. 1.06(1) to ask the petitioner to supplement the rule petition and to seek comment from interested persons or entities before the rule petition proceeds to a preliminary review by the court. A copy of any letter to the petitioner and response shall be forwarded to the court.

(4) *Court action.* The rule petition proceeds to a preliminary review by the court.

1.08 Preliminary Court Review of Rule Petition

(1) *Staff memorandum.* The court staff member under s. 1.06(1) shall review the rule petition and comments filed by the Legislative Reference Bureau and prepare and circulate a memorandum to the court summarizing the rule petition, identifying issues, proposing any changes to the rule, making recommendations, and seeking questions from the court.

(2) *Court review.* The court shall discuss the staff memorandum prepared under sub. (1) and the rule petition at an open administrative conference to decide the appropriate action to be taken.

(3) *Criteria.* In making this decision the court shall consider whether the rule petition is within the court's jurisdiction, serves the court's rule making mission and is consistent with the court's statement of policy.

(4) *Court action.* The court may take any action it deems appropriate, including any of the following:

- (a) Adopt the rule proposed, or a modified version, without further comment.
- (b) Reject the rule proposed without further comment.
- (c) Circulate the rule petition for comment without a public hearing.
- (d) Schedule the rule petition for public hearing.
- (e) Refer the rule petition to another entity for its review and recommendation.
- (f) Request further information or analysis from the petitioner or interested persons or entities.

1.09 Scheduling a Public Hearing; Soliciting Comments

(1) *Criteria for public hearing.* The court shall hold a public hearing when required by Wis. Stat. § 751.12, or when the court determines that a public hearing would be helpful to the court in its rulemaking function or when the rule has significant impact on the public, bar or bench.

(2) *Public Hearing procedures.* If the court elects to hold a public hearing on a rule petition, the court shall provide notice of the public hearing and an opportunity to comment as follows:

- (a) The court shall enter an order identifying the petitioner and rule, explaining the rule to be created or changes to existing rules, and setting a date and time for a public hearing on the rule petition.
- (b) The order scheduling the public hearing shall be distributed to interested persons and entities, posted on the court's Web site, and published pursuant to s. 751.12(3), stats., if applicable.
- (c) The court shall issue a letter to interested persons and entities, as determined by the court, seeking comments on the rule petition.

(3) *Comments without public hearing.* If the court determines that a public hearing is not necessary or required, the court may provide an opportunity for comment as follows:

- (a) The court may issue a letter to interested persons and entities, as determined by the court, seeking comments on the rule petition.
- (b) The court may schedule the rule petition on an open administrative calendar following the expiration of the comment period.

1.10 Comments on Rule Petition

(1) *Filing.* Any person may file with the court comments on a rule petition during the comment period and shall promptly forward a copy of the comment to the petitioner.

(2) *Number.* The person filing a comment under sub. (1) shall file with the court 10 copies of any comment.

(3) *Electronic Comment.* In addition to the copies required in sub. (2)(a), a person filing a comment under sub. (1) may file with the court a copy of the comment in electronic form by forwarding the comment to the clerk in a format determined by the court and designated on the court's Web site. The clerk shall post comments on the court's Web site.

(4) *Content.*

(a) The comment shall identify the rule petition to which it relates.

(b) The comment shall state clearly whether the person agrees or objects to the rule petition or parts thereof and provide an explanation.

(c) The comment shall contain the name of the person or entity filing the comment and the name of a contact person, including phone number and email address.

(d) A court staff member shall review and screen comments for inappropriate content.

1.11 Response by petitioner to comments

(1) *Filing.* The petitioner shall file with the court a response to any comments by the date designated by the court.

(2) *Number.* The petitioner shall file with the court 10 copies of a response.

(3) *Electronic Response.* The petitioner shall file with the court one copy of a response in electronic form by forwarding the response in a format determined by the court and designated on the court's Web site.

(4) *Content.* The petitioner's response shall include substantive discussion of the comments received. The petitioner shall explain whether the comments should be incorporated into the rule petition or rejected.

1.12 Report to the Court

Prior to any public hearing and court consideration of the rule petition, the court staff member shall review the rule petition, comments, and responses to comments and prepare and circulate a report and recommendation to the court.

1.13 Public Hearing

(1) At the public hearing scheduled under s. 1.09(1), the petitioner shall present the rule petition and interested persons and entities shall have an opportunity to comment on the rule petition.

(2) The court may establish time limits for each presenter and speaker at the public hearing.

1.14 Final action by the Court

(1) *Public hearing procedures.*

(a) If a public hearing is held under s. 1.09(2), the court shall discuss the rule petition in an open administrative conference following the public hearing.

(b) Upon completion of the public hearing and a report by a court staff member and consideration of all relevant materials, including comments received and oral testimony, the court may take any of the following actions:

1. Adopt the rule proposed without modification.
2. Adopt a modified version of the rule proposed.
3. Decline to adopt the rule proposed or take further action.
4. Seek further information.
5. Take other action the court deems appropriate.

(2) *Comments without public hearing.*

(a) If the court solicited comments without a public hearing under s. 1.09(3), the court shall discuss the rule petition in an open administrative conference following the expiration of the comment period.

(b) Upon closure of the comment period and completion of a report by the court staff member under s. 1.06(1) and consideration of all relevant materials, including comments received and oral testimony, the court may take any of the following actions:

1. Adopt the rule proposed without modification.
2. Adopt a modified version of the rule proposed.
3. Decline to adopt the rule proposed or take further action.
4. Seek further information.
5. Take other action the court deems appropriate.

1.15 Expedited Review of Rule Petition

(1) If the court determines that an emergency exists requiring the immediate consideration of a petition, the court may take any action the circumstances require and consistent with Wis. Stat. § 751.12, if applicable.

(2) If the court determines that the petition seeks a change that is technical or perfunctory in nature, the court may take immediate action without advance publication or public comment.

1.16 Distribution of Adopted Rule

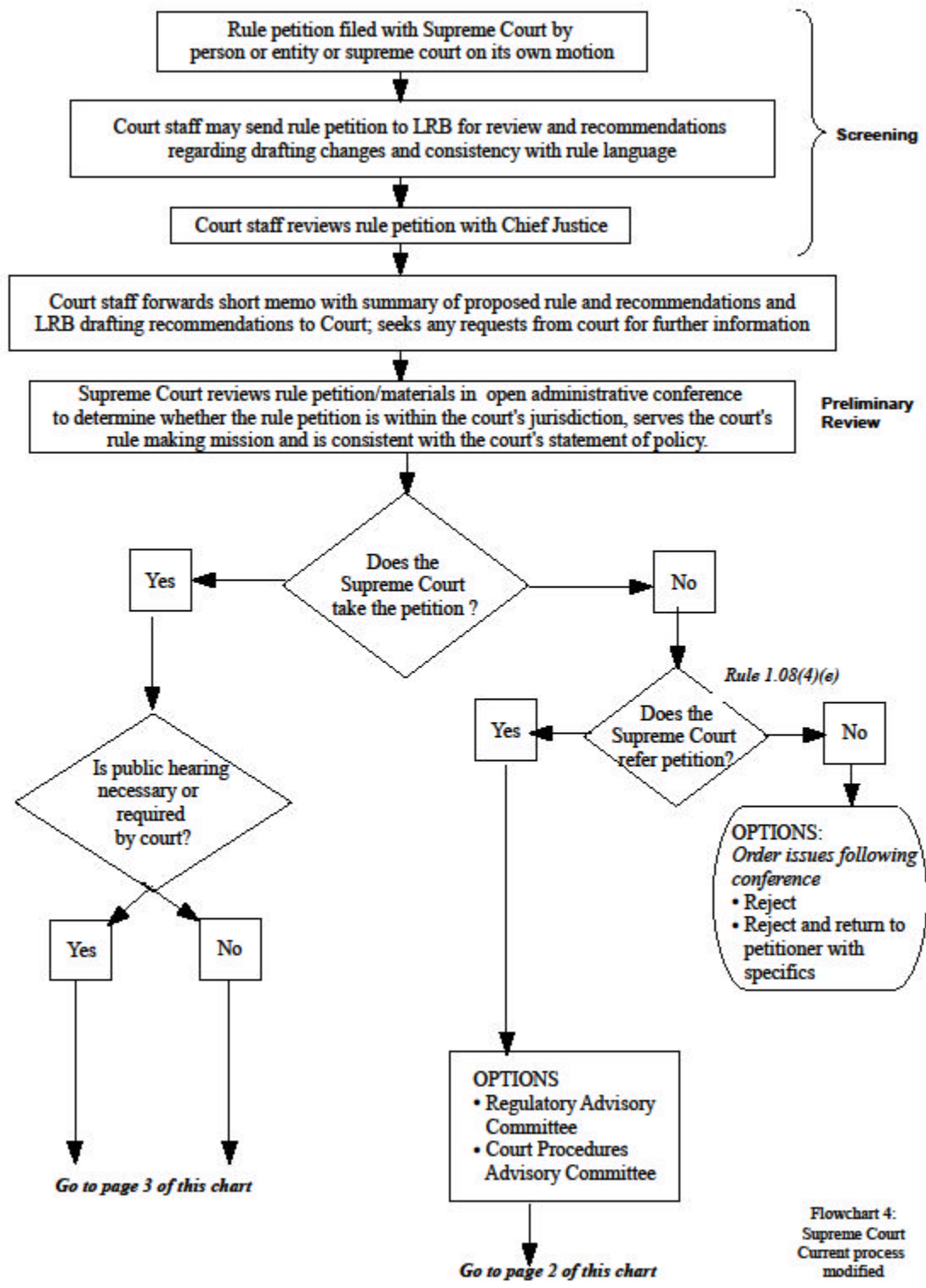
(1) A rule is adopted by court order under SCR ch. 98.

(2) A court order adopting a rule under this chapter shall be published in the official state newspaper promptly after adoption and by the state bar of Wisconsin in its official publication and posted on the court's Web site.

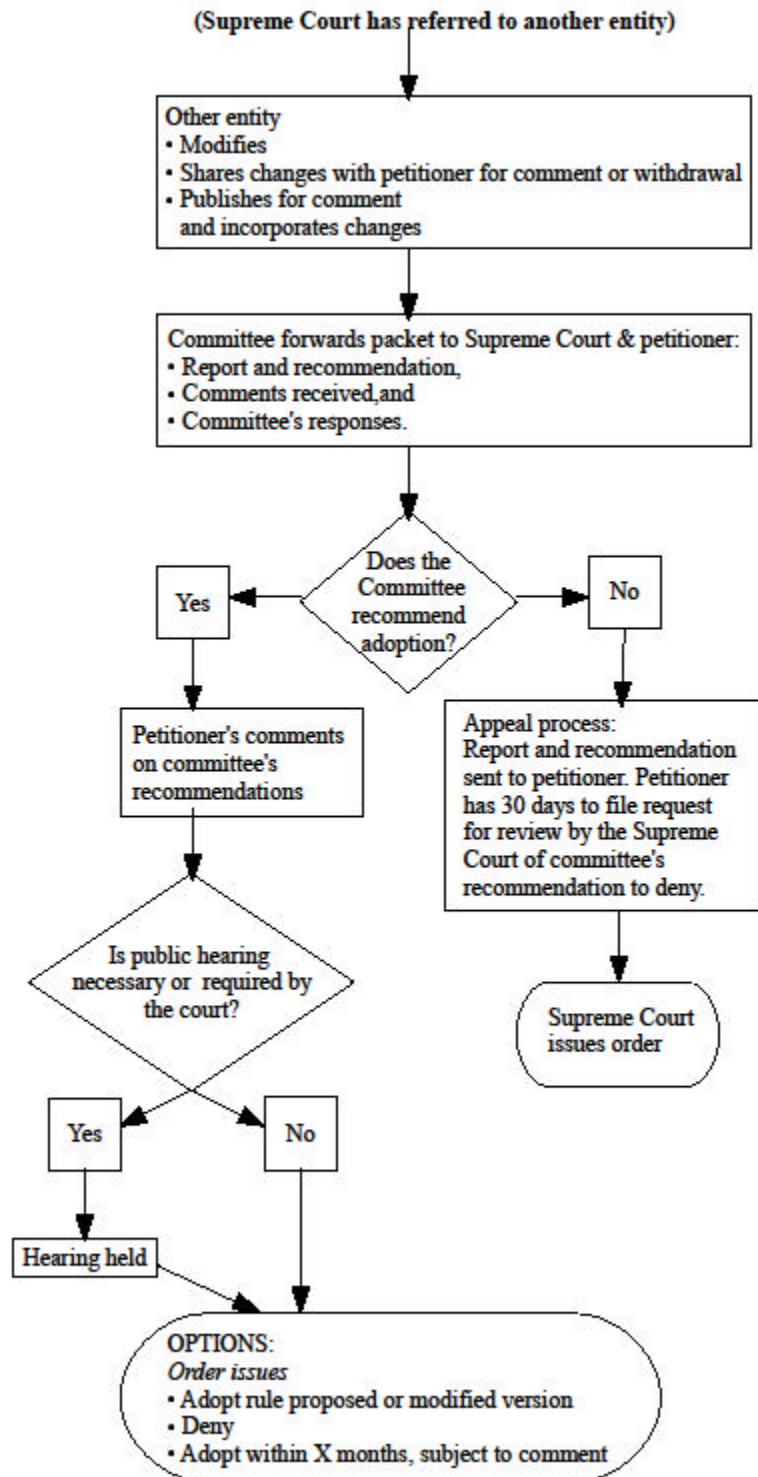
1.17 Effective Date

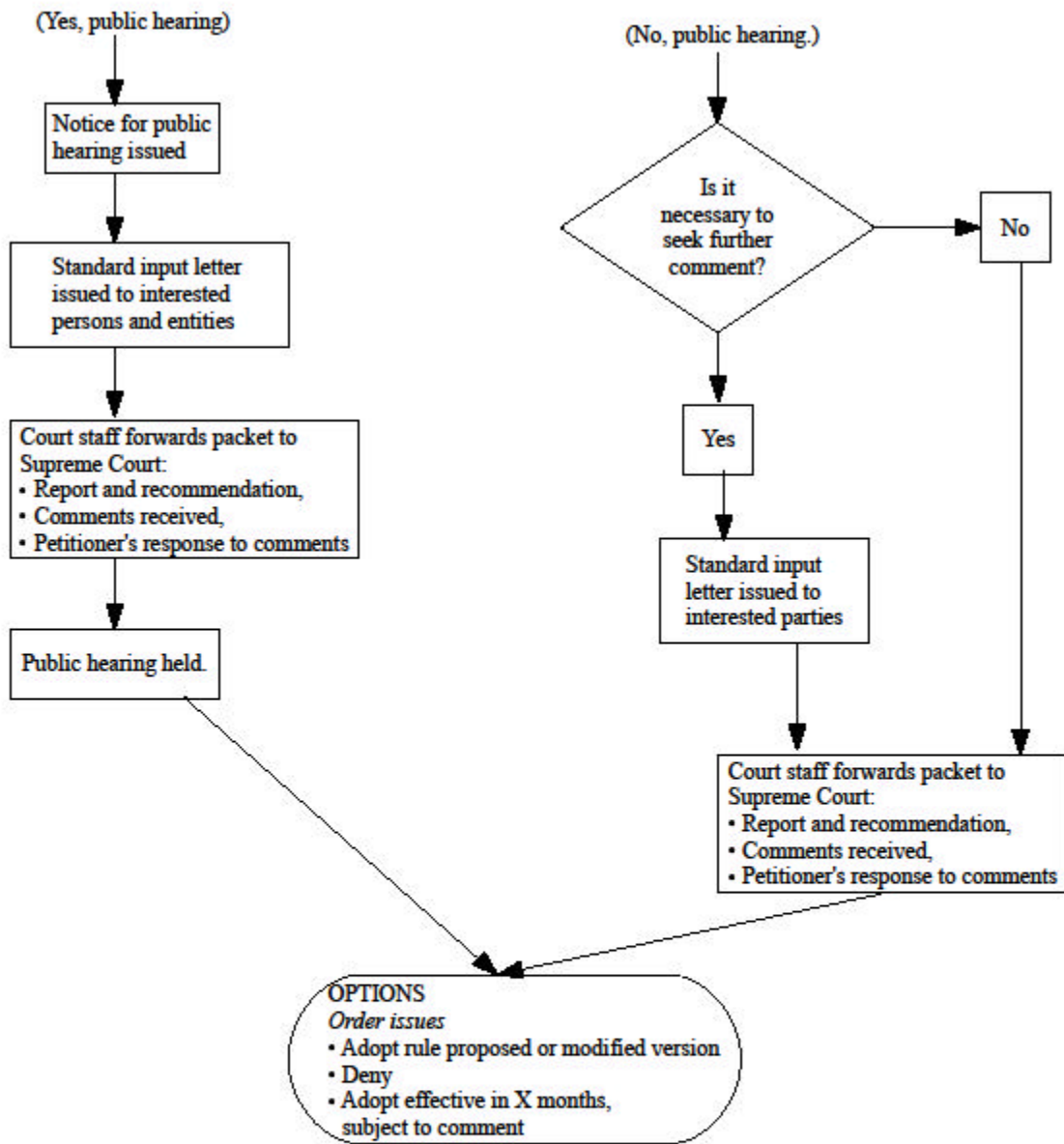
The court shall designate the effective date of each rule.

FLOW CHART



Flowchart 4:
Supreme Court
Current process
modified





APPENDIX B: SAMPLE PETITION

IN THE SUPREME COURT OF WISCONSIN

In the Matter of)
Petition to Amend) Rule Petition No. _____
[Body of Rules])

[Name of petitioner] petitions the Supreme Court to adopt amendments to /create [body of rules] governing [brief explanation of subject matter].

A memorandum supporting this petition is attached as a separate document.

The court's cover sheet for rule petitions accompanies this petition.

I. Contents of Proposed Rule Amendments

[Place proposed amendment in this area, indicating proposed new language with underscoring and showing deleted language with ~~strikethrough~~.]

Rule petitions shall be numbered consistent with the Legislative Reference Bureau bill drafting style and format, as in the following examples:

SECTION 1. 802.10 (3) (jm) of the statutes is created to read:

SECTION 2. 805.07 (2) (a) of the statutes is amended to read:

SECTION 3. 804.08 (3) of the statutes is repealed and recreated to read:

SECTION 4. 804.09 (2) of the statutes is renumbered 804.09(2)(a).

II. Authority [add appropriate rule making authority]

This petition is made pursuant to the court's rulemaking authority under Wis. Stat. § 751.12

This petition is made pursuant to the court's rulemaking authority under s. 751.12 and its administrative authority over all courts conferred by Article VII, s. 3 of the Wisconsin Constitution.

This petition is made pursuant to the court's administrative authority over all courts conferred by Article VII, s. 3 of the Wisconsin Constitution.

III. A Word version of the petition and memorandum in support shall be filed electronically with the Clerk of the Supreme Court.

Dated this ____ day of [month, year].

Respectfully submitted:

By Petitioner's Name
 Bar number (if petitioner is an attorney)
 Address
 Phone Number
 Email address

APPENDIX C: SAMPLE MEMORANDUM IN SUPPORT

IN THE SUPREME COURT OF WISCONSIN

In the Matter of)
Petition to Amend) Rule Petition No. _____
[Body of Rules]) **Memorandum in Support**

[Name of petitioner] petitions the Supreme Court to adopt amendments to /create [body of rules] governing [brief explanation of subject matter].

[The memorandum in support of the petition shall be filed as a separate document with the petition. The memorandum shall provide the background and purpose of proposed rule amendments. The memorandum shall do, at a minimum, all of the following:

1. Explain whether the petitioner seeks to create, amend, or repeal a statute or rule.
2. Identify the statute or rule being created, amended, or repealed.
3. Provide a thorough, detailed explanation of each rule proposed and reasons therefore.
4. Explain how the rule proposed may affect any person's procedural or substantive rights.
5. Identify experiences of other state or federal courts that have adopted or rejected identical or substantially similar rule petitions, if applicable.
6. Analyze any state or federal rule upon which the rule proposed is based.
7. Analyze any fiscal and administrative impacts of the rule proposed.
8. List any related rule petitions pending before the court (petitions are listed at http://www.wicourts.gov/supreme/petitions_audio.htm).
9. List any known previous action taken by the supreme court relating to the subject matter of the rule proposed.
10. Identify any related pending litigation in federal or state courts.
11. List any persons and entities that the petitioner has consulted about the rule petition.
12. List any known interested persons or entities.
13. Analyze how the rule proposed affects existing rules, statutes or case law.
14. Include any request for a public hearing or a statement that no public hearing is necessary.
15. Justify any request for expedited consideration.

A Word version of the petition and memorandum in support shall be filed electronically with the Clerk of the Supreme Court.

Dated this ____ day of [month, year].

Respectfully submitted:

By Petitioner's Name
 Bar number (if petitioner is an attorney)
 Address
 Phone Number
 Email address

APPENDIX D: COVER SHEET

PETITION FOR RULE-MAKING IN THE SUPREME COURT OF WISCONSIN

COVER SHEET

IN THE MATTER OF

AMENDMENT

CREATION

OF

(list statute, rule, or administrative matter)

1. Petitioner(s):

Contact Person's Information

Name

Address

Telephone

E-mail

2. Subject matter of petition:

3. Type of petition (check all that apply):

Pleading and practice (Wis. Stat. § 751.12)

Supreme Court Rule

Administrative matter (e.g. Electronic Filing)

Other. Please explain.

4. Type of change (check all that apply):

- Creation of statute (Wis. Stat. § 751.12)
- Creation of Supreme Court Rule
- Creation of Administrative rule
- Amendment of existing statute (Wis. Stat. § 751.12)
- Amendment of existing Supreme Court Rule
- Amendment of existing Administrative rule

5. Supreme Court Rule, statute, or administrative matter to be

amended or created:

6. Principal reason or purpose for this petition:

7. Identify Supreme Court Rule, statute, or administrative matter that may be affected by, or are in conflict with, the petition.

8. Rules that the supreme court promulgates to regulate pleading, practice, and procedure in judicial proceedings shall not abridge, enlarge, or modify the substantive rights of any litigant. Wis. Stat. § 751.12(1).

a. How would the petition affect any person's procedural rights?

b. How would the petition affect any person's substantive rights?

9. Potential fiscal impact of petition (further explanation may be provided in supporting memorandum to the petition).

10. Potential administrative impact of the petition (further explanation may be provided in supporting memorandum to the petition).

11. Identify any related pending petition. For a list of petitions, see http://wicourts.gov/supreme/petitions_audio.htm

12. Are you requesting a public hearing? If so, please explain.

Yes.

No.

13. Is expedited consideration necessary?

Yes. If so, please explain.

No.

14. Proposed effective date.

Note: A rule change under Wis. Stat. § 751.12 shall have an effective date of January 1 or July 1.