

STATE OF WISCONSIN
SUPREME COURT

In re:

PROPOSED AMENDMENTS TO
WISCONSIN STATUTE § 904.085 (4) (e).

**PETITION OF WISCONSIN JUDICIAL COUNCIL
FOR AN ORDER AMENDING
WIS. STAT. § 904.085 (4) (e)**

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ON BEHALF OF THE WISCONSIN JUDICIAL COUNCIL

October 29, 2009

INTRODUCTION

The Wisconsin Judicial Council respectfully petitions the Supreme Court to amend WIS. STAT. § 904.085 (4) (e) to provide that the hearing contemplated in this section be held *in camera*.

This petition is directed to the Supreme Court's rule-making authority under WIS. STAT. § 751.12.

PETITION

For the reasons stated in the Memorandum in Support, filed herewith, the Judicial Council respectfully requests that the Supreme Court adopt the following rule:

SECTION 904.085 (4) (e) of the statutes is amended to read:

(e) In an action or proceeding distinct from the dispute whose settlement is attempted through mediation, the court may admit evidence otherwise barred by this section if, after an *in camera* hearing, it determines that admission is necessary to prevent a manifest injustice of sufficient magnitude to outweigh the importance of protecting the principle of confidentiality in mediation proceedings generally.

CONCLUSION

The granting of this petition will close a gap in the protections intended for communications in mediation which are critical to settlement. The amendment preserves the intended confidentiality until the court has determined that the prerequisites to disclosure have been met.

Therefore, the Wisconsin Judicial Council respectfully requests that WIS. STAT. §904.085 (4) (e) be amended as set forth above.

Dated October 29, 2009.

RESPECTFULLY SUBMITTED,

WISCONSIN JUDICIAL COUNCIL

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