



# Wisconsin State Public Defender

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February 27, 2014

Clerk, Supreme Court  
Attention: Deputy Clerk, Rules  
P.O. Box 1688  
Madison, WI 53701

RECEIVED

FEB 28 2014

Re: Comment on Rule Petition 13-10, Limited Scope Representation CLERK OF SUPREME COURT  
OF WISCONSIN

Dear Clerk of Supreme Court:

The SPD appreciates the opportunity for written comment on Petition 13-10 and offers the following observations regarding the petition.

The State Public Defender (SPD) participated in the drafting of this petition, and the SPD focused on issues related to the case types in which the agency provides representation and to the unique role that SPD staff attorneys fulfill at initial appearances in criminal and juvenile proceedings. The SPD appreciates the hard work of the committee that drafted this petition to facilitate access to the court for litigants who do not require or cannot afford an attorney's services throughout a pending proceeding.

### *Proposed Changes to Rule 20:1.2(c)*

The SPD supports the proposed amendments to Rule 20:1.2(c), which include an exception to the writing requirement for clients who consent to limited scope representation provided by the SPD.

The SPD provides representation to clients who meet the agency's statutory criteria: a prospective client must be the subject of a legal proceeding in which the SPD is authorized to appoint an attorney, and (subject to statutory exceptions), the prospective client must also meet the SPD's financial standards. The majority of SPD cases involve criminal and juvenile proceedings, and SPD staff meet many prospective clients who are in jail or in juvenile detention pending their initial court appearances. These meetings often occur under tight time constraints stemming from the schedules of the court, the attorney, and the jail or detention facility.

By exempting the SPD from the written consent requirement for limited scope representation, proposed Rule 20:1.2(c)(1)d. addresses the practical difficulties that the SPD would otherwise encounter. For example, an applicant's financial eligibility for SPD services often depends upon his or her ability to return to work (applicant is eligible if incarcerated, but exceeds income criteria if working). In this situation, the SPD staff attorney represents the applicant at the initial appearance and informs the applicant (and the court), that if the applicant returns to work, he or she will no longer be eligible for SPD representation. Even when financial eligibility is clear, the SPD generally needs to complete a conflict check after the initial appearance before determining which attorney will be appointed to the case.

*Proposed Rule 802.045*

The proposed rules do not explicitly define “limited scope representation,” although the concept is set forth in proposed Rule 802.045(2) as “one or more individual proceedings or issues in an action.” “Action” is described in Wis. Stat. sec. 801.01(1) as court proceedings under chapters 801-847, Wis. Stats. The SPD expressed concerns during the drafting process that the proposed rules could be interpreted to require a notice of limited appearance (see proposed Rule 802.045(2)), whenever future court proceedings in the underlying case might occur after the anticipated representation has been concluded. Within the ambit of SPD practice, the following are common examples of post-judgment proceedings that the SPD has historically interpreted to be new cases requiring a new and separate SPD appointment of an attorney:

- Post-conviction or post-dispositional relief
- Post-dispositional petitions in juvenile court
- Sentencing after revocation of supervision
- Recommitment hearings (chapter 51)
- Annual *Watts* reviews (chapter 55)
- Post-disposition hearings under chapter 980

The SPD does not interpret the proposed rules to require a notice of limited appearance whenever the possibility exists of these types of future post-judgment proceedings. None of these situations has been identified as the impetus for this petition. Nonetheless, the scope of the proposed rule could be clarified by either an amendment or a comment stating that proposed Rule 802.045 applies only when the attorney intends to terminate representation before the court (in which the proceeding is presently pending), renders judgment on the pending claim(s).

This clarification would recognize a presumption (or default position), that an attorney (whether retained or appointed), does not generally agree to provide representation in all post-judgment proceedings that could potentially be filed under the same case number. The notice under proposed Rule 802.045 would be applicable only when the attorney and client agree that the representation will end before the case proceeds to judgment.

*Proposed Document Preparation Provisions*

These provisions conditionally authorize an attorney to prepare a document for submission to court by a pro se litigant. This practice can promote access to the courts for a litigant who may be unable to retain (or otherwise engage the services of), an attorney for in-court representation. The SPD has historically assisted former clients and others with completing such documents, the most common one being a petition for court appointment of counsel for a defendant who slightly exceeds the SPD’s statutory financial criteria (generally, the primary assistance is that the SPD provides the applicant with the standard form petition and with instructions on how to complete and file the form).

The SPD supports the proposed rules authorizing the attorney’s ghostwriting and requiring the notation on the document that an attorney assisted in its preparation. Similarly, the SPD endorses the proposal

that the attorney may rely upon the factual assertions of the pro se litigant, absent reason to believe that they are false or legally insufficient to support the requested relief.

*Conclusion*

The SPD thanks the Court for the opportunity to comment on this petition and is willing to provide any further information as requested.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kelli S. Thompson", with a long horizontal flourish extending to the right.

Kelli S. Thompson  
State Public Defender