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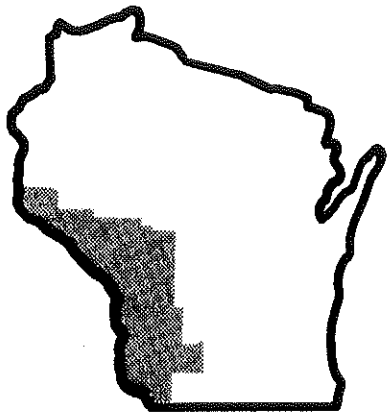

January 22, 2016

Wisconsin Supreme Court
P.O. Box 1688
Madison, WI 53701-1688

Re: Report of Follow-up Study Committee for Rule Petition 13-14
Results of Judicial Conference Survey

Honorable Justices of the Supreme Court:

On July 1, 2014, the Supreme Court charged this Committee with filing a report proposing criteria and a protocol to evaluate amendments to SCR 60.04 (1), as they affect a judge's reasonable efforts to facilitate the ability of all litigants to be fairly heard. This Committee filed its report on December 11, 2014.

At a conference on February 26, 2015, the Court requested that the Office of Judicial Education offer a session informing judges about the changes to the rule. The Court also requested that this Committee conduct further research, including a survey of the judges about how the rule has worked in practice. The presentation was offered at the Judicial Conference on November 12, 2015, and the survey was taken immediately afterwards.

Results of the Judicial Conference Survey

Survey responses were returned by 124 respondents. The survey asked six yes/no questions and left room for narrative responses explaining the answers. 98 narrative answers were received.

- 75% of judges reported being aware of the rule before the session at the conference. Of the judges who were not aware of the rule change, 81% said they did not plan to make changes to their practices. In the narrative responses, many expressed the view that the rule amendment confirmed or supported their existing practices.
- 27% of judges reported that they had changed their courtroom techniques in response to the rule change. Some said that they felt supported by the changes to the rule and listed the techniques that they were using. Some judges said the techniques help litigants feel they are being heard and feel more satisfied with the process.
- 2% of judges reported negative effects to the rule, including concern that the techniques might encourage pro se litigation, and concern about a double standard between what was expected of lawyers and self-represented litigants.

Overall, judges saw little effect from the rule changes because the changes were consistent with their existing practices. From these results, the Committee concludes that the rule is working as intended from the judicial perspective.

Further Research That Might Be Conducted

At its conference on February 26, 2015, the Court also discussed the possibility that surveys might be taken of court commissioners, clerks of circuit court and bar members.

With respect to court commissioners and clerks, this Committee is willing to send the same survey taken by the judges to all of the full-time circuit court commissioners. The Director of State Courts Office has email addresses for these individuals and is willing to send and tabulate the surveys. This Committee is also willing to modify the questions to fit the clerks of circuit court.

With respect to a survey of bar members, we believe that different questions need to be asked. In our first report to the court on December 11, 2014, we noted the difficulties involved in conducting meaningful surveys, based on advice we received from the State Bar of Wisconsin market research manager.

We do not believe our small committee has the expertise necessary to formulate the State Bar questionnaire, nor the resources to distribute the survey or collate the results. If the Court would like to survey the State, we respectfully suggest the Court seek assistance from the State Bar market research manager for the survey design, distribution and collation of results. We believe the Court would likely need to allocate funding for such a survey of the State Bar.

It has been my privilege to serve on this committee with Court of Appeals Judges Lisa Stark, Paul Lundsten, and Joan Kessler and Chief Judges James Daley and Gregory Potter. I express particular appreciation for the help of Marcia Vandercook from the Director's office. On behalf of this committee, we thank you for this opportunity to serve the Court. Please feel free to contact me if you have any questions.

Sincerely,

Hon. James J. Duvall
Chief Judge
7th Judicial District

Encl. SCR 60.04 Follow-up Study, 2015 Judicial Conference SURVEY RESULTS

SCR 60.04 Follow-up Study Committee
2015 Judicial Conference
SURVEY RESULTS

On July 1, 2014, the Wisconsin Supreme Court amended SCR 60.04 and related commentary to clarify the reasonable efforts a judge may use to facilitate the ability of all litigants to be fairly heard in a manner consistent with a judge's obligations to perform all judicial duties fairly and impartially. Supreme Court Rule Order 13-14 also directed that a committee be formed to develop criteria and a protocol to evaluate the impact of this rule on the Wisconsin court system. To assist in its mission, the committee asks that you please complete the following survey. Thank you.

	Survey conducted at Judicial Conference, November 12, 2015 **124 responses**	**Yes**	**No**
1.	Prior to today, were you aware Rule 60.04 was amended as discussed above?	**75%**	**25%**
2.	If you answered "No" to question number 1, do you plan to make any changes to the manner in which you handle cases or the techniques you employ in handling cases now that you are aware of the amendment? Please explain.	**19%**	**81%**
	If you answered "Yes" to question number 1, please answer questions 3, 4, 5, & 6:		
3.	As a result of the amendment have you changed the techniques you employ in handling cases? If so, please give examples:	**27%**	**50%**
4.	If you have changed your practice by employing the techniques or employing them more often, have you found the techniques listed in the amendment to be of benefit in ensuring all litigants, including self-represented litigants, are fairly heard? Please explain:	**30%**	**15%**
5.	Have you received any negative feedback or been appealed as a result of any changes you have made due to the amendment? If so, please explain:	**2%**	**66%**
6.	Have you received any positive feedback as a result of any changes you have made due to the amendment? If so, please explain:	**14%**	**48%**

Thank you.

Narrative responses

1.	Prior to today, were you aware Rule 60.04 was amended as discussed above?	**75%**	**25%**
2.	If you answered "No" to question number 1, do you plan to make any changes to the manner in which you handle cases or the techniques you employ in handling cases now that you are aware of the amendment? Please explain.	**19%**	**81%**

- I wasn't on the bench prior to the rule implementation
- I wasn't aware of the rule by but already do these things
- Not new information – have been doing these things
- I have always done these things, except "modify traditional order of taking evidence" – this will be helpful
- I already do it
- Just authorizes what I already do
- I have always been active in non-jury cases, particularly where there are pro se litigants, in trying to fairly get a basic understanding of a dispute
- I believe the amendment and my prior practices are consistent
- I swear both parties immediately; explain ground rules in advance; be relaxed on evidence rules but explain that even if I listened to inadmissible evidence, I can't base my decision on it
- I believe the techniques I employ incorporate the amended rule
- I try to be engaged, neutral. But still let parties present their cases.
- I have always done any and all of the 9 suggestions depending on circumstances/need
- I have been in misdemeanor court for 3 years and I have never had a problem handling pro se cases except maybe those with language barriers
- Follow the suggestions made here today. The comment section for SCR 60.04 is very helpful
- To be "impartial" – already doing that
- As a relatively new judge, I have been conducting pro se hearings consistent with the rule as it has been changed. I try to be neutral and engaged
- I was already using these techniques in handling these types of cases and will continue to do so

If you answered "Yes" to question number 1, please answer questions 3, 4, 5, & 6:

3. As a result of the amendment have you changed the techniques you employ in handling cases? If so, please give examples: **27%** **50%**

- Will be freer in allowing narrative testimony
- I try to be patient, explain legal standards, etc.
- I did everything already, but have not and will not allow pleadings to be admitted
- I try to explain this role in clear language to prevent the represented party from feeling cheated – having retained and paid for counsel
- I'm a new judge, but the rule change has helped me decide to implement procedures to be more engaging
- I did it this way before the rule change
- I feel supported by my supreme court and fellow judges (and family court commissioners) that my process is appropriate
- I feel more allowed to provide information on basic procedure explaining civil court procedure and what is expected of pro se litigants
- My JA fills out the findings of fact and conclusions of law while I am questioning the parties, they sign it when the hearing is done and we give copies to the parties. All done! Case closed!
  JA: "Thank heavens I don't have to cajole these people for the FFCL any more!"
- I'm a new judge, so I have always followed the amended rule
- I try to be more flexible with construing motions and letters to court
- I was pretty much doing the suggested items before the change
- The rule codifies how I was handling self-represented litigants prior to the rule change
- I started after the rule change
- I have only changed somewhat, as I always gave pro se parties an opportunity to explain themselves outside of strict procedural rules
- At times I review the rule to remind myself of how far to go or not to go and sometimes explain/state the rule for why I will or will not do something
- I was already doing what the rule contemplates
- It just made clear I could do what I was doing
- I'm not convinced that the rule actually changed what could be done with parties, rather than just clarified/memorialized permitted practices
- I have always taken steps to assist self-represented litigants
- Ask if pleadings are truthful and correct
- I now use steps 4, neutral questions, and 5, modify order of evidence
- New to the bench in 2014 so was developing technique ongoing and

incorporate this change

- Explain lead concepts/procedure
- I was doing these things prior to the rule change because I felt it was necessary
- I try to explain how hearing will be handled at the start of the proceedings, make sure each have opportunity to be heard
- I explain procedure and legal concepts; permit narrative testimony; permit litigants to adopt pleadings as testimony
- I always have used the recommended techniques!
- The rule simply affirmed what I thought was my proper role
- Explain purpose of hearing, translate legal terminology/concepts to everyday language; operate to advise parties of their right to legal counsel and the available opportunities through Judicare or personal means; plan to inform what is expected in interim
- Ask direct questions of litigants
- The rule validated what I have been doing all along in attempting to resolve cases fairly and expeditiously while still giving the litigants the feeling that they were heard
- I feel more free to take the steps listed in the comment
- I tried to employ these techniques before
- I have been more active in drawing out facts that I need to make a decision, making sure both sides are heard
- I basically did these things before the rule change
- I asked questions of pro se litigants to a greater degree and helped them formulate questions on cross-examination
- Manner of handling cases was the same before the amendment

4. If you have changed your practice by employing the techniques or employing them more often, have you found the techniques listed in the amendment to be of benefit in ensuring all litigants, including self-represented litigants, are fairly heard? Please explain: **30%** **15%**

- The only one not usually helpful is #8 – by the time I get involved it is too late to consult pro se resources
- Having good input/implementation is an important goal
- The litigants leave the courtroom calmer, more businesslike, feeling that they will get through the divorce in due course
- Pro se understand real need for attorney representation
- The techniques (which I have and continue to use) help ensure people are fairly heard
- I feel the parties are more at ease
- Frankly I don't think the rule has changed significantly or substantially how I preside; nor significantly nor substantially benefitted anyone
- I believe so, but minimally
- Litigants present their case more confidently when they have a basic understanding of process and principles. They do not feel their lack of experience in court is being used against them
- Always a work in progress and challenges always there. Using the techniques helps the process
- I followed the principles in rule prior to adoption
- The techniques have been of benefit. However, works better when neither party is represented
- The litigant's perception of being treated fairly and that they had an opportunity to tell me "their side" is beneficial to the public's perception of my court and the court system as a whole
- I feel I did these things before and still do them so no change
- I approach the same as before the rule. I slowed down the proceedings and tried to be careful in explaining the rules of trial and the courtroom and that I control who gets to talk and when. I control much of the examination, but I also allow more narrative testimony so a sense that the person has told you her story
- A judge can easily participate as an equitable neutral. The line between this rule and the role of an active participant is easy to anticipate and guide
- Pro se litigants rarely understand the legal standards
- Motivational interviewing and common sense matter and make a difference
- Lowering the stress/animosity level in the courtroom

5. Have you received any negative feedback or been appealed as a result of any changes you have made due to the amendment? If so, please explain: **2%** **66%**

- Lawyers complaining two standards – the law which lawyers need to follow and free passes given to pro se
- Have heard I let people go on too long. That's a hard balance to make sure people get a reasonable amount of time to explain their side
- this rule change is idiotic. It violates our duties as judges.
- I worry we are encouraging more pro se litigation when parties really should spend the money and find an attorney
- Attorney objects

6. Have you received any positive feedback as a result of any changes you have made due to the amendment? If so, please explain: **14%** **48%**

- The litigants seem more satisfied and complaint of the decision
- Positive comments from litigants and more informative hearing
- When I was campaigning for judge, I got great comments on the work I did as a family court commissioner for people and their children. I was told my technique/demeanor would be missed.
- "Thank you! We didn't know what to do!"
- I have had parties thank me for listening to them
- Parties felt like you listened and the hearing was fair
- I think pro se litigants simply expect that someone will guide them through the process
- Many litigants have thanked me for speaking plain English and treating them well
- People appreciate when I listen – by my remarks they know they were heard
- Several pro se litigants have left word with staff that their "trial" was done fairly
- The litigants frequently thank court after decision is made
- People in court have thanked me, even some who have not won
- Have heard that people feel they are listened to and things are explained
- Court personnel have indicated they are liking my approach and the litigants have commented as such
- Practice was already consistent with 60.04
- The parties still think I haven't done enough
- Lawyers appreciate it because it enhances the perception of fairness in the courtroom