The Uniform Interstate Depositions and Discovery Act (UIDDA) was completed and approved by the Uniform Law Commission (ULC) in 2007. Since that time, it has been enacted in 33 U.S. jurisdictions. Below is information provided by the ULC regarding the act in response to questions posed by Wisconsin Supreme Court Commissioner Julie Anne Rich in a letter dated August 7, 2014.

- **Please provide several specific examples of how the proposed rule will work in practice. Include examples involving *pro se* litigants, corporate parties, and where a special proceeding is commenced.**

Having been enacted in over 30 U.S. jurisdictions, there are a multitude of examples that demonstrate the way in which UIDDA has been utilized in practice. By way of illustration, a typical case may consist of a case being litigated in State A, and one of the parties to that litigation wishes to take the deposition of a non-party witness located in State B. In the case of a represented party, that party's attorney would issue a subpoena in State A, which s/he would submit to the county clerk in the deponent's jurisdiction in State B. The clerk would then transpose the terms of the subpoena onto a State B subpoena form, and turn the subpoena over to a process server for service on the State B deponent.

See below regarding *pro se* litigants.

- **Did the committee consider whether the proposed rule presents implications for the unauthorized practice of law ("UPL"), SCR Ch. 23?**
    - **The proposed rule eliminates the need to obtain local counsel for depositions. Does this change have UPL implications?**

The drafting committee for UIDDA considered at length whether the act would have implications for the unauthorized practice of law. While ultimately state-specific rules regarding the practice of law may dictate certain requirements, the drafting committee concluded that the act's provisions do not implicate the out-of-state practice of law. *See* Official Comment to UIDDA Section 6 ("This act does not change existing state rules governing out-of-state lawyers appearing in its courts.")

The act of requesting a subpoena in State B, when litigation is pending in State A and the attorney is licensed in/representing a client in State A, is merely incidental to the State A litigation. Indeed, the proposed Wisconsin rule explicitly states that "obtaining and completing a subpoena under this subsection does not constitute an appearance in the courts of this state." (Section 887.24(3)(d))

- **Did the Uniform Law Commission provide comment on this proposal?**

This document contains the ULC's responses to the questions posed regarding this proposal.

- **Proposed Wis. Stat. § 887.24(3)(a) provides that to "request issuance of a subpoena under this section, a party may submit a foreign subpoena to a clerk of the circuit court for the county in which discovery is sought to be conducted in this state, accompanied by the appropriate Wisconsin subpoena form." Is a standard subpoena form used throughout Wisconsin?**

The ULC does not have information on Wisconsin-specific practice and procedure.

- **Proposed Wis. Stat. § 887.24(3)(a)4 requires that when the subpoena is served it contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel. How will this provision operate if one *pro se* party does not want to disclose personal contact information to an adverse party--for example, in cases involving allegations of domestic violence?**

UIDDA anticipates parties will provide notice of relevant identifying information to other parties, consistent with in-state civil practice. A state's laws, however, may provide options for confidentiality protections for litigants who wish not to disclose such information for specific reasons (e.g., domestic violence concerns).

- **A Judicial Council Committee Note to Wis. Stat. § 887.24(3) indicates, in an example, that the "clerk of court, upon being given the Kansas subpoena, will then issue the identical Wisconsin subpoena," and adds that "issue" includes verifying that the subpoena complies with Wis. Stat. § 887.24(3)(a) and signing it. Please explain what is required for verification and clarify any new obligations this provision imposes on a clerk of court.**

The ULC does not have information on Wisconsin-specific practice and procedure

- **The Legislative Reference Bureau commented that, due to the use of passive voice in the proposed rule, it is sometimes unclear who has the duty to act. For example, proposed Wis. Stat. § 887.24(3)(d) states that "[o]btaining and completing a subpoena under this subsection does not constitute an appearance in the courts of this state."**

    - **Please provide additional information on the meaning and purpose of proposed Wis. Stat. § 887.24(3)(d).**

    - **Is an explanatory note warranted?**

Section 3(a) of UIDDA uses the following phrasing (also in the passive voice): "*A request for* the issuance of subpoena…does not constitute an appearance in the courts of this state." (emphasis added.) We defer to the state's choice on the specific language to employ.

- **Proposed Wis. Stat. § 887.24(4) modifies the language from the UIDDA to substitute the term "party" in place of the term "attorney" to extend the rule's applicability to the ever-increasing number of cases involving *pro se* parties.**

    - **How does the proposed rule operate if a *pro se* party seeks to conduct a deposition?**

Attorneys are generally authorized to issue subpoenas. In the case of a *pro se* party, s/he may have to seek court involvement/an attorney for the limited purpose of having the initial subpoena issued.

    - **What effect might this have on the administration of justice?**

UIDDA may expedite and make more cost effective the administration of justice in many cases.

- **Is Wisconsin unique in requiring corporations to appear by counsel (subject to certain exceptions such as small claims proceeding)?**

We do not believe Wisconsin is unique in this regard; there are other states that have this requirement as well.

- **Proposed Wis. Stat. § 887.24(5) requires compliance with Wisconsin's "rules relating to discovery…" Is the term "rules" sufficiently inclusive? Should "rules" be replaced with "laws"?**

Section 5 of UIDDA uses the language "rules or statutes."

- **Is local counsel needed for special proceedings commenced under Wis. Stat. § 887.24(6)?**

Under the uniform act, a special proceeding in State B (i.e., the state of the deponent), when litigation is pending in State A, would not in and of itself require local counsel. While the discovery state's (State B) courts would be the appropriate forum in which to resolve a dispute relating to the subpoena, this type of special proceeding would not constitute a new action in State B. Again, the discovery dispute in State B is incidental to the litigation in State A. Of course, as the Official Comment to Section 6 of the uniform act indicates, what is required in this regard will ultimately be dictated by the state's rules: "If a party makes or responds to an application to enforce, quash, or modify a subpoena in the discovery state, the lawyer making or responding to the application *must comply with the discovery state's rules governing lawyers appearing in its courts*." (emphasis added)

- **Proposed Wis. Stat. § 887.24(6)(c) states that if a special proceeding is required, the court "in its discretion may award any prevailing party its reasonable attorney's fees and expenses."**

    - **What is the court's authority to impose such a fee?**

    - **Did the committee consider whether this provision comports with rules in typical in-state discovery practices?**

These provisions are not included in the uniform act, although do not conflict with it.

For further information, please contact ULC Legislative Counsel Casey Gillece (cgillece@uniformlaws.org)