

SUPREME COURT AGENDA

Open Rules Petition Conference

Monday, March 4, 2013

9:15 a.m.

Supreme Court Hearing Room

The Court will continue discussion of any matters not completed on the February 28 open rules conference agenda (attached), as well as any new matters filed timely for March 4.

SUPREME COURT AGENDA

Open Rules Petition Conference

Thursday, February 28, 2013

1:30 p.m.

Supreme Court Hearing Room

Open Rules Conference Matters

- I. Rule Petition 12-01: Report on Court's Rule Making Function (Report and Recommendation of the Wisconsin Supreme Court Advisory Committee on Rule Procedures submitted to the Supreme Court in May 2011 regarding the court's rule making function). Public hearing held: 3/5/12; held by PDR, April 2012; PDR filed draft rule proposal 11/28/12; **Court discussed at open conf. on 1/22/13; PDR filed red-lined (track changes) copy of draft rule proposal on 1/23/13; SSA draft letter to interested parties circulated to court 2/5/13 (attached hereto).**
- II. Rule Petition 12-11: Petition to create a Judicial Code Review Committee, filed 12/27/12 by Chief Justice Abrahamson. **Preliminary memo circulated 1/10/13. Court started discussion at 1/22/13 open rules conference; DOJ filed comment 2/7/13; Wis. Trial Judges Ass'n filed comment 2/15/13.**
- III. Rule Petition 13-01: Petition to amend SCR 31.05(6) to grant attorney members of Preliminary Review Committee and Special Preliminary Review Panel CLE credit, filed 1/8/13 by OLR, Preliminary Review Committee, Special Preliminary Review Panel, and Board of Administrative Oversight. **Preliminary memo to be circulated.**
- IV. Rule Petition 13-02: Petition to create SCR 40.145 relating to waiver of fees for qualified veterans, filed 1/30/13 by BBE. **Preliminary memo to be circulated.**

Information Items for Future Open Rules Conferences

- A. Rule Petition 08-01A (Juries): Rule petition 08-01 amended ch. 756, specifically changing the number of jurors for a misdemeanor case from 6 to 12 under 756.06(2)(am). Wis. Stat. § 972.02(2) references a misdemeanor jury of 6; needs clean-up amendment. Memo to court dated 9/4/12 with draft order circulated 9/5/12. Court discussed at 9/19 open conf. Court agreed to refer this matter to the legislature to handle. **JR discussed transfer to Legislature with Nancy Rottier; Nancy sent e-mail inquiring if this can be handled as a correction bill by Law Revision Committee; draft bill (LRB-0493/P1) received from the LRB on 11/7/12; copy of draft bill sent to court 11/29/12; no court action required.**
- B. Rule Petition 09-07: In the Matter of: The Petition of the State Bar of Wisconsin to Modify Chapter 72 of the Supreme Court Rules filed 06/30/09 by Diane S. Diel, President, State Bar

of Wisconsin. Amended petition filed 10/27/09 by Douglas W. Kammer, President, State Bar of Wisconsin. **Pending before Legislative Committee of Judicial Conference.**

- C. Rule Petition 10-09: In the Matter of the Petition for Amendment of various Rules in Chapter SCR 20 filed 10/21/10 by John Nicholas Schweitzer. **No court action required.**
- D. Rule Petition 12-07: Petition to amend SCRs 70.03 and 70.12(1)(c)3. and create SCR 70.12(5), (6) and 70.16, relating to the Supreme Court Finance Committee, filed by Justice Patience Drake Roggensack on 7/6/12. Preliminary memo circulated 9/18/12. Court discussed at 9/19 open conf.; Court voted 6 to 1 to solicit public comment and schedule for further discussion at an future open administrative conference (AWB would have held public hearing). Public comment solicited on 10/18/12 to standard list of recipients, as well as additional persons/entities stated on record at the 9/19 open conf. Scheduled for discussion at 1/15/13 open conference; staff memo circulated 1/9/13; **PDR is holding to file comment to SSA's 12/13/12 filing.**
- E. Rule Petition 12-08: Petition to Create SCR 74.02, Appointment of the Judicial Commission Members, filed by Chief Justice Shirley S. Abrahamson on 7/31/12. Preliminary memo circulated 9/17/12. Court discussed at 9/19 and 9/25 open confs. Court voted, 4 to 3, to not hold public hearing and to deny petition. **Draft denial order circulated 10/15/12; approvals received at 10/31/12 open conf.; SSA to write dissent (AWB join?).**
- F. Rule Petition 12-09: Petition to create Rules under Supreme Court Rules Ch. 80 and amend Supreme Court Rule 98.07, Publication of Rules filed by Publication Committee on 9/7/12. Preliminary memo circulated 9/17/12. Court discussed at 9/25 open conf. Court voted to schedule public hearing. Public hearing held 1/15/13; notice of public hearing issued 10/11/12; public input solicited 11/16/12; staff hearing memo circulated 1/10/13; petition granted (4 to 3); **draft order circulated 1/29/13 (rec'd approvals from SSA, AWB, NPC – PDR held order 2/4/13).**
- G. Rule Petition 12-10: Petition to amend Supreme Court Rule 22.24 Relating to Costs Assessments in the Lawyer Regulation System, filed by OLR on 9/11/12. Preliminary memo circulated 9/24/12. Court discussed at 9/27 open conf. Court voted unanimously to solicit public comment on the petition from standard list as well as those other persons/entities as stated on the record and schedule for further discussion at future open conf. Public comment solicited 10/17/12 to standard list of recipients as well as those suggested by court on the record at the September 27 OPEN CONF.; court discussed at 11/30/12 open conf. The court confirmed the rule change will take effect on 1/1/13, and will apply to disciplinary matters currently pending before the OLR and this court as of 1/1/13. Court then voted unanimously to adopt the petition. **FINAL ORDER ISSUED 1/23/13.**
- H. Discussion of 2011 Wisconsin Act 209 creating a fee waiver program for veterans. Under the legislation, veterans who meet the eligibility requirements would receive a waiver of the initial licensing fee for most licenses granted by state agencies. The act also requests the Supreme Court to promulgate a rule waiving the initial admission fee for lawyers admitted to practice. See § 751.153. Letter to BBE & State Bar (sent 6/7/12) referring the matter for

consideration and determination of whether a petition seeking a change to the court rules might be appropriate; response received. Staff memo circulated 9/7/12. Court discussed at 9/25 open conf. Court voted to direct BBE to file rule petition; JR sent letter to BBE on 10/16/12 re: court's decision; **BBE filed petition 1/30/13 (see 13-02); *item will be removed from future agendas.***

- I. DTP's memorandum on Justice on Wheels. Court agreed to place this item on open administrative conference. Memo from Amanda Todd circulated 10/22/12 for discussion at 10/31/12 open administrative conference. **SSA e-mail 12/7/12 to court and Amanda Todd re: further outreach proposals.**

Memorandum

STATE OF WISCONSIN
SUPREME COURT



DATE: February 4, 2013
TO: All Justices, Julie Rich
FROM: SSA
SUBJECT: Rules Petition 12-01

*circulated
2/5/13*

As I promised at the open rules conference on PDR's proposed rule on rules petitions, here is my proposed letter to go out for comments.

Please advise of any suggested changes or your approval of the letter.



Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

110 E. MAIN STREET, SUITE 440

MADISON, WISCONSIN 53703

Telephone (608) 266-7442

Nancy A. Kopp
Julie A. Rich
David W. Runke
Mark A. Neuser
Commissioners

*circulated
2/5/13
SRO*

[DATE]

To: Interested Parties – See Attached List

Re: Supreme Court Rule Petition 12-01, Judicial Rulemaking

Greetings:

The Wisconsin Supreme Court is seeking public comment on proposed changes in the court's rulemaking function to strengthen, improve, and make more regular the rulemaking function. You have received this letter because you, your agency, or your organization have been identified as potentially having an interest in this matter or as having filed a rule petition with the supreme court in the past several years.

Currently, two proposals are pending before the court, one was filed by the Supreme Court Advisory Committee on Rule Procedures and one was filed by Justice Patience Roggensack.

In May 2011 the Wisconsin Supreme Court Advisory Committee on Rule Procedures filed its report and recommendations with the supreme court. In appendix A of its report, the committee proposed rules governing the court's rulemaking process. The report and comments on the Advisory Committee's proposed rule are posted on the court's website under Rule Petition 12-01 at <http://wicourts.gov/scrules/1201.htm>.

On November 28, 2012, Justice Patience Roggensack filed a rule proposal for the court's rulemaking function. It is filed on the court's website under Rule Petition 12-01. Justice Roggensack proposes a calendar for filing rules petitions, for filing comments, and for court hearings. A copy of Justice Roggensack's November 28, 2012 rule proposal can be found at the court's website under Responses to Rules Petition 12-01 at <http://wicourts.gov/scrules/1201.htm>.

On January 23, 2013, Justice Roggensack also provided a redlined version of her rule proposal in which her changes to the Advisory Committee's rule proposal are indicated by strikethroughs and underlining. This document is also at the court's website under Responses to Rules Petition 12-01 at <http://wicourts.gov/scrules/1201.htm>.

The court is interested in comments on Justice Roggensack's rule proposal and comments on the feasibility of a calendar for consideration of rules petitions, including the time for filing rule

petitions, the time for comments, and the time for court consideration of a rules petition. The court is interested in any of your comments on this matter, including comments on the following:

- the impact of a calendar on your organization's participation in the rule making process (if, for example, your organization meets at designated times);
- the potential for a calendar to provide more predictability and certainty to the rulemaking process;
- alternative timelines for a calendar for rulemaking;
- the effect, if any, of Justice Roggensack's rule proposal on the statutory filing and notice requirements under Wis. Stat. § 751.12;
- the holding of more than the single November court "floor period" to discuss and decide rule petitions.

Comments should be filed by ____, with the Clerk of Supreme Court, Attention: Carrie Janto, Deputy Clerk, P.O. Box 1688, Madison, WI 53701-1688. If possible, email a Microsoft Word version of your response to carrie.janto@wicourts.gov or clerk@wicourts.gov. See comment guidelines at the court's website at <http://wicourts.gov/scrules/petitioncomment.htm>.

Following the expiration of the comment period the court will schedule an open rules petition conference to discuss this matter further. The court has not yet decided whether it will schedule a public hearing. Written comments filed with the clerk's office will be posted on the website, as will court communications on this matter. You might wish to continue to consult the court's website for Rules Petition 12-01 at <http://wicourts.gov/scrules/supreme.htm> for developments on this matter.

If you have specific questions or other comments regarding this matter, please contact Susan Gray, c/o Office of the Director of State Courts, P.O. Box 1688, Madison, WI 53701-1688 (telephone: 608-266-6708) (email: susan.gray@wicourts.gov).

Very truly yours,

Julie Anne Rich
Supreme Court Commissioner

JAR/

cc: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley

Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience Drake Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman

Add all petitioners since 2000

List of Interested Parties for Supreme Court Rules Matters

Board of Bar Examiners
Chief Circuit Court Judges
Circuit Court Judges
Court of Appeals Judges
Court of Appeals, Attention: Chief Staff Attorney
Director of State Courts
Legal Action of Wisconsin, Attention: John F. Ebbott
League of Women Voters
Marquette Law School, Attention: Joseph D. Kearney
Office of Lawyer Regulation
Office of State Public Defender, Attention: Kelli S. Thompson
Office of the Attorney General, Attention: J.B. Van Hollen
State Bar of Wisconsin, Attention: Kevin Klein
State Bar of Wisconsin, Attention: George Brown
State Bar of Wisconsin, Attention: Lisa Roys
State Bar of Wisconsin, Attention: Natasha Fahey-Flynn
U.W. Law School, Attention: Margaret Raymond
Eastern District of Wisconsin Bar Association, Attention: Katy Borowski, Executive Director
Western District Bar Association of Wisconsin, Attention: Lynn M. Stathas
Wisconsin Asian Bar Association, Attention: Arman S. Rouf
Wisconsin Association for Justice, Attention: Jane E. Garrott, Executive Director
Wisconsin Association of African American Lawyers, Attn: Jazmin Taylor
Wisconsin Association of Criminal Defense Lawyers, Attention: Peter McKeever
Wisconsin Association of Judicial Court Commissioners, Attention: Alice Rudebusch
Wisconsin Bankers Association, Attention: Attorney John Knight
Wisconsin Clerks of Circuit Court Association, Attention: Lonnie Wolf
Wisconsin Counties Association, Attention: David Callender
Wisconsin Defense Counsel, Attention: Jane Svinicki and Andy Cook
Wisconsin District Attorneys Association, Attention: Diane Schlipper, Executive Director
Wisconsin Family Court Commissioners Association, Attention: Sandra Grady, Exec. Secretary
Wisconsin Hispanic Lawyers Association, Attention: Adria D. Maddaleni
Wisconsin Judicare, Inc., Attention: Rosemary Elbert
Wisconsin Judicial Commission, Attention: James Alexander
Wisconsin Judicial Council, Attention: April Southwick
Wisconsin Juvenile Court Clerks Association, Attention: Joy Pecha
Wisconsin Municipal Judges Association, Attention: Honorable Scott Letteney
Wisconsin Registers in Probate Association, Attention: Amy Franzen
Wisconsin State Attorneys Association, Attention: Francis X. Sullivan
Wisconsin Trial Judges Association, Attention: Honorable Mary M. Kuhnmuensch
Wisconsin Tribal Judges Association, Attention: Amanda Rockmann, President
Christian Gossett, Winnebago County District Attorney

List of Additional Interested Parties – if any