

SUPREME COURT AGENDA

Tuesday, April 28, 2015

9:30 a.m.-12:00 p.m.

**Open Rules Petition Conference
Supreme Court Hearing Room**

2:00 p.m.: Bar Exam Admissions

3:30 p.m.: Closed Conference to complete 4/16/15 agenda

Public Hearing

Rule Petition 14-04: Petition to create Wis. Stat. § 801.19, relating to protection of information in circuit court records.

Open Rules Petition Conference Matters

- I. Rule Petition 14-04: Petition to create Wis. Stat. § 801.19, relating to protection of information in circuit court records. Preliminary Memo circulated 11/7/14. **Discussed at 11/17/14 open conf.; Court voted to conduct public hearing (scheduled for 4/28/15). Notice of public hearing issued 12/2/14. Letter soliciting public comment sent 12/29/14 (comments due 2/6/15; petitioner response due 2/20). State Bar filed comments 2/9/15. Hearing memo circulated 4/16/15.**
- II. 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 9/25/12 rules conf. Court voted to schedule public hearing. Notice of public hearing issued 10/11/12; public input solicited 11/16/12; staff hearing memo circulated 1/10/13; public hearing held 1/15/13; petition granted (4 to 3); draft order circulated 1/29/13 (rec'd approvals from SSA, AWB, NPC – PDR held order 2/4/13). **Discussed 11/17/14 and court voted to issue orders on 2/16/15 whether or not additional writings received. Motion for reconsideration filed by NPC 1/30/15; PDR joined. SSA filed memo on 2/10/15. Held: NPC, PDR, AKZ, MJG. Court discussed at 2/26/15 open conf.; MJG moved to approve petition as amended by NPC's motion; court voted 5:2 in favor; MJG held for future discussion; MJG may move to reconsider petition in whole or in part. Not reached for discussion 3/17/15.**
- III. Rules Petition 12-11 and 13-17 relating to Judicial Code Review Committee.

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 rules conference. DOJ filed comment 2/7/13; Wis. Trial Judges Ass'n filed comment 2/15/13; Judicial Comm'n filed comment 2/22/13. Court discussed at 2/28/13 rules conf.: DTP wants side-by-side comparison of ABA Model

Rule vs. Wisconsin rule. Commissioner Julie Rich to comment on court's 2/28/13 discussion. JR e-mail to court 3/20/13. Court discussed at 4/12/13 open conf. JR to compile side-by-side comparison of Wis. code vs. 2007 ABA code, as revised, with assistance of a summer intern. **Staff memo and supporting materials sent to court 11/25/13; Court discussed matter at 12/6/13 rules conference. Question raised whether matter is proper subject of a rules conference; matter on hold pending Chief Justice's filing of rule matter. Not reached for discussion 3/17/15. See pending matter 13-17.**

Rule Petition 13-17: In re Matter of the creation of Supreme Court Rules 60.001, 60.002, and 60.003 relating to a Judicial Code Review Committee filed 12/09/13 by Chief Justice Abrahamson. **Preliminary Memo circulated 2/20/14. Not reached for discussion 3/17/15. See pending matter 12-11.**

- IV. Rule Petition 13-16: Petition to Amend Wis. Stat. § 887.24 Relating to Foreign Depositions and Discovery. Preliminary Memo circulated 2/18/14. Court discussed at 6/25/14 rules conf: voted to hold public hearing (9/29/14). Notice of public hearing issued 7/3/14. Letter soliciting public comment sent 8/7/14; letter to petitioner seeking additional information sent 8/7/14. Petitioner filed response 9/5/14. Uniform Law Commission filed comments 9/8/14. State Bar filed comments 9/22/14. Staff Memo circulated 9/24/14. Public hearing held 9/29/14; not reached for discussion 9/29/14 or 11/17/14. **Court discussed at 12/5/14 open conf.; court voted to return petition. Draft order circulated 2/11/15. Court discussed at 2/26/15 open conf.; court voted to approve order, with revision. Order issued 3/12/15. Amended petition filed 3/24/15; Memo and draft order circulated 4/17/15.**
- V. Rule Petition 13-05: Petition to Create a Procedure for Enforcement of Supreme Court Disciplinary Orders filed 5/29/13 by State Bar, Board of Administrative Oversight, and the OLR. Preliminary Memo circulated 6/5/13. Court discussed at 6/11/13 open rules conf.: Court voted to schedule public hearing. Notice of public hearing issued 8/1/13 (public hearing: 10/25/13); letter soliciting public comment sent 8/5/13; letter to petitioners seeking additional information sent 8/5/13. Public hearing held 10/25/13; court voted 4 to 3 and issued order on 6/24/14 holding petition and directing OLR to appoint committee to revise rule; **OLR solicited public comment re revised proposal on 1/5/15. Revised proposal and draft final order circulated 3/5/15. Not reached for discussion 3/17/15.**
- VI. Rule Petition 14-05: Petition to Amend SCR 20:3.4(a) (Fairness to Opposing Party and Counsel). Preliminary Memo circulated 12/3/14. Not reached for discussion 11/17/14. Court discussed at 12/5/14 open conf.; court voted to solicit public comment before deciding on public hearing. Letter soliciting public comment sent 12/29/14 (comments due 2/6/15; petitioner response due 2/20). OLR filed comments 1/28/15. Attorney Dean Dietrich filed comments 2/5/15. Petitioner response filed 2/12/15. **Staff memo circulated 2/17/15. Court discussed at 2/26/15 open conf.; court voted unanimously to deny petition, with understanding that the issue is not barred from discussion within any future OLR review. Final deny order circulated 3/19/15 (Approvals: NPC, DTP, PDR, AKZ, MJG).**

Information Items—Not to be discussed

- A. Rule Petition 08-17 (Establishment of Access to Justice Commission). Discuss scheduled court review of Access to Justice Commission. **Staff memo circulated 10/22/13; discussed 12/6/13. Court to review ATJ Commission with pending rule petition 13-15.**
- 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 (“Expunction”) 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. **The Legislative Committee voted at its 9/9/14 meeting to pursue the issue of expunction during the next legislative session. Nancy Rottier, Legislative Liaison, will ask LRB to create a draft, using 13-003-3 as the basis with certain changes; no court action required at this time**
- C. 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 rules 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. Court discussed at rules conf. on 2/28/13; on vote of 4 to 3 court approved concept of a calendar cycle proposed by PDR; letter to interested parties to be re-drafted. JR revised and circulated letter to interested parties on 4/3/13. PDR submitted revised version of letter to court at open conf. Court discussed at 4/12/13 (SSA holds letter) and 6/11/13 open rules conf. Letter to interested parties sent 6/21/13; responses due 8/16/13 (Judicial Council was granted extension to file any response until after its next meeting in September). PDR filed amendment on 8/2/13. State Bar filed comments 9/19/13. **Letter soliciting comment from Rules Advisory Committee sent 9/24/13 (response due 11/18/13). SSA filed Comment 1 and Comment 2 10/2/13. Not reached for discussion 2/26/15. Staff memo to be circulated.**
- D. 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 9/19/12 and 9/25/12 rules confs. Court voted, 4 to 3, not to hold public hearing and to deny petition. **Draft denial order circulated 10/15/12; approvals received at 10/31/12 rules conf.; SSA holding order.**
- E. Rule Petition 13-04: Petition to amend rules relating to Referees in the Lawyer Regulation System filed 5/22/13 by State Bar, Board of Administrative Oversight, and the OLR. Preliminary Memo circulated 6/5/13. Court discussed at 6/11/13 open rules

conf.: Court voted to schedule public hearing. JR to draft letter requesting additional information from petitioners. Notice of public hearing issued 8/1/13 (public hearing: 10/25/13); letter soliciting public comment sent 8/5/13 (comments due 9/30/13); letter to petitioners seeking additional information sent 8/5/13 (response due 9/30/13). **Public hearing held 10/25/13; court voted unanimously to deny petition. Discussion of SSA's suggestion of comprehensive review of OLR began but not completed. PDR asserted that the question of an OLR review was not appropriate for discussion because it was not the subject of a present rule petition and had not been pre-approved for discussion on the court's open rules conference agenda. In the interest of efficiency, the court moved on to petition 13-05 without resolving the status of an OLR review. SSA will move to reconsider the denial of 13-04 if needed to consider comprehensive OLR review as integral to petition for referees. (Rule petition 15-01 regarding OLR Review filed by SSA on 2/6/15.) Draft Final Order circulated 2/11/15. Court discussed at 2/26/15 open conf. PDR moved to remove a paragraph from draft order; court voted 4:3 to remove. Court voted 5:2 to approve draft order, as amended; SSA will write.**

F. Rule Petition 13-14: Petition for amendment to SCR 60.04 (Judicial Code amendment regarding communication with pro se litigants). Public hearing held 2/24/14, not reached for discussion on 2/24/14, 3/21/14, or 4/4/14. Court discussed at 5/27/14 open conf; Court voted 6:1 to approve petition and adopt rule, subject to revisions consistent with court's discussion. Final Order issued and effective July 1, 2014. Report filed by Follow-up Study Committee on 12/12/14 regarding proposed evaluation criteria. Staff memo circulated 1/7/15; not reached for discussion on 1/20/15. Staff memo circulated 2/13/15. **Court discussed at 2/26/15 open conf.; court voted to send letters to Judicial Education Committee and to Chair of Study Committee with further direction. Letter to study committee circulated 3/20/15 (Approvals: NPC, DTP, PDR, AKZ, MJG); SSA circulated alternate letter to court 3/24/15; transcript provided to committee.**

G. Rule Petition 13-15: Petition to Establish Pilot Project and Create Rule Governing Appointment of Counsel in Civil Cases. Preliminary Memo distributed 10/22/13. **Court discussed at 12/6/13 open conf.; court voted to hold petition and consider with review of the ATJ Commission (08-17); Matter to be scheduled later in 2014 or 2015. Comments received from ATJ Commission 10/9/14; Memo circulated 11/11/14. Not reached for discussion 11/17/14. Court discussed at 12/5/14 open conf.; court voted to send letter to legislature. JR to draft.**

H. Rules Petition 14-02 and 07-11 relating to Discretionary Transfer to Tribal Courts

Rule Petition 14-02: Proposed Amendment/Dissolution of Wisconsin Statute § 801.54 Discretionary Transfer of Civil Actions to Tribal Court. Preliminary Memo circulated 9/15/14. Not reached for discussion 9/22/14; 9/29/14; **Discussed 11/17/14; court voted to conduct comprehensive review of 07-11 (Discretionary transfer to tribal courts) in Fall 2015. This petition will be heard at the same time. Order to issue directing petitioners to supplement petition and granting motion of one petitioner to remove her name from petition. Draft order and accompanying letter circulated 2/11/15. Court discussed at 2/26/15 open conf.; court voted to approve draft order, with**

revision. Order and letter re hearing information issued/sent to interested parties 3/17/15.

Rule Petition 07-11: In the matter of the petition to create a rule governing the discretionary transfer of cases to tribal court. By order dated 7/1/11 the court reviewed the operation of Wis. Stat. § 801.54 governing the discretionary transfer of cases to tribal court and determined that the rule was operating as expected and that no action was required. See S. Ct. Order 07-11, 2008 WI 114 (issued Jul. 31, 2008, eff. Jan. 1, 2009) (Roggensack, J., dissenting), as amended by S. Ct. Order 07-11A, 2009 WI 63 (issued Jul. 1, 2009, eff. Jul. 1, 2009) (Roggensack, J., dissenting). . The majority of the court voted to conduct another review of the rule in January 2016. **Per court's decision on 11/17/14 in 14-02, the review will now be conducted in the Fall of 2015. Draft order and accompanying letter circulated 2/11/15. Court discussed at 2/26/15 open conf.; court voted to approve draft order, with revision. Order and letter re hearing information issued/sent to interested parties 3/17/15.**

- I. Rule Petition 14-03: Petition to create Wis. Stat. § 801.18, relating to mandatory electronic filing in circuit court and conversion to electronic circuit court records. Preliminary Memo circulated 11/7/14. Discussed at 11/17/14 open conf.; Court voted to conduct public hearing (scheduled 3/17/15). Notice of public hearing issued 12/2/14. Letter soliciting public comment sent 12/29/14 (comments due 2/6/15; petitioner response due 2/20). State Bar filed comments 2/9/15. State Public Defender filed comments 2/9/15. Wis. Counties Association filed comments 2/9/15. Judge Sciascia filed comments 2/12/15. Committee of Chief Judges filed comments 2/25/15. Ken Fall filed comments 3/2/15. DCF filed comments 3/2/15. Hearing Memo circulated 3/9/15. Wis. Clerks of Circuit Court Assoc. filed comments 3/10/15. State Bar filed written testimony 3/11/15. **Public hearing held 3/17/15. Matter to be discussed further at 6/10/15 open conference.**
- J. Rule Petition 14-06: Petition to Amend Supreme Court Rules 22.001(2), 22.02(6)(c), 22.03(1), 22.25(3), and 22.25(4) (OLR Discretion). **Preliminary Memo circulated 1/12/15. Court discussed at 1/20/15 open conference and voted 4:2 (AWB and MJG dissenting) to schedule public hearing. NPC would seek written comment before scheduling public hearing. Public hearing to be scheduled; hearing order and letter seeking public comment to follow.**
- K. Rule Petition 14-07: Petition for Amendment to Rules Relating to Electronic Banking. **Preliminary Memo circulated 1/12/15. Court discussed at 1/20/15 open conference and voted 6:1 (PDR dissenting) to schedule public hearing. Public hearing to be scheduled; hearing order and letter seeking public comment to follow.**
- L. Rule Petition 15-01: Matter of the Petition to Review of the Office of Lawyer Regulation. **Preliminary staff memo circulated 2/11/15. Court discussed at 2/26/15 open conf.; court voted unanimously to set for public hearing (Fall 2015) and send letter seeking public input. Public hearing to be scheduled; hearing order and letter seeking public comment to follow.**

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