

SUPREME COURT AGENDA

**Open Rules Petition Conference
Friday, December 6, 2013
1:45 p.m.
Supreme Court Hearing Room**

Public Hearing

None.

Open Rules Conference Matters

Order of discussion: Items VIII, IX, X, XI, III, and following:

- I. 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.**
- II. Rule Petition 08-28 (Lawyer Support & Monitoring Rule 08-28): Discuss scheduled review of OLR Lawyer Support and Monitoring Rule. **OLR report issued 9/20/13.**
- III. 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.**
- IV. 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 issues of comprehensive review as integral to petition for referees.

- 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. 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 4 to 3 to hold petition and appoint committee to revise rule (OLR, SC Commissioners, SSA and NPC). Draft order circulated; Chief Justice commented on order 12/2/13 (see Julie Rich e-mail 12/2/13).**
- VI. Rule Petition 13-06: Petition to amend SCR 22.12 Relating to Stipulations in Lawyer Disciplinary Proceedings filed 06/12/13 by OLR. Preliminary memo distributed 9/9/13. Court discussed at 9/12/13 open conf.; court voted unanimously to solicit public comment and discuss at future open conf. JR to draft letter to interested parties (including current referees and defense counsel for respondents in OLR matters). **Letter to interested parties sent 10/1/13; responses due 11/8/13; petitioners' response 11/22/13; staff memo to be distributed.**
- VII. Rule Petition 13-08: Petition to amend SCRs 10.05(4)(a)(5) and 10.05(4)(g) Board of Governors, Functions; SCR 10.06(2) Executive Committee, Powers; SCR 10.09(2) Disbursements; SCR 10.12 Official Publication; Notice to Members; SCR 10.13(2) Amendment, Amendment of Bylaws filed 07/03/13 by the State Bar Preliminary memo distributed 9/10/13. Court discussed at 9/12/13 open conf.; court voted unanimously to solicit public comment and discuss at future open conf. **Letter soliciting public input (including the Publication Review Committee members), and letter seeking additional information from State Bar sent 10/11/13. Responses due 11/15/13 and 11/29/13, respectively. Staff memo to be distributed.**
- VIII. Rule petition 13-12: Petition to create SCR 22.21m relating to Public Notice of Formal Investigations in the Public Interest filed 08/28/13 by Board of Administrative Oversight and the OLR. **Preliminary Memo distributed 9/10/13.**
- IX. Rule Petition 13-14: Petition to amend SCR 60.04, filed 9/13/13 by Wisconsin Access to Justice Commission. **Preliminary Memo distributed 10/22/13.**
- X. 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.**

- XI. Rule Petition 13-16: Petition to Amend Wis. Stat. § 887.24 Relating to Foreign Depositions and Discovery. **Preliminary Memo to be circulated after 12/6/13.**
- XII. 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.**

Information Items

- 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 9/19/12 rules 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 ("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. **Pending before Legislative Committee of Judicial Conference.**
- 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 Comments 1 and 2 10/2/13.**
- 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 9/19/12 rules conf.; Court voted 6 to 1 to solicit public comment and schedule for further discussion at a future open rules 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 rules conf. Scheduled for discussion at 1/15/13 rules conference; staff memo circulated 1/9/13; PDR held 1/15/13 to file response to SSA's 12/13/12 filing. **PDR filed response 8/28/13.**

- 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 9/19/12 and 9/25/12 rules 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 rules conf.; SSA holding order to write dissent.**
- 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 9/25/12 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).**
- G. Rule Petition 13-07: Petition to amend SCR 10.04 and SCR 10.05 relating to Officers and the Board of Governors of the State Bar of Wisconsin filed 07/03/13 by the State Bar. Preliminary memo distributed 9/10/13. Court discussed at 9/12/13 open conf.; court voted unanimously to schedule public hearing and to consider bylaw challenge at same time (see rule petition 13-13). Court voted to schedule public hearing and solicit public input. **Notice of public hearing issued 11/1/13 (public hearing: 1/21/14); letter soliciting public comment sent 11/11/13 (comments due: 1/3/14).**
- H. Rule Petition 13-09: Petition to amend SCRs 10.03(3) and 10.03(5) relating to classes of membership and membership dues and reduction of dues filed 07/03/13 by the State Bar. Preliminary memo distributed 9/9/13. Court discussed at 9/12/13 open conf.; court voted unanimously to schedule public hearing. Court voted to schedule public hearing and solicit public comment (letter to include State Bar Senior Lawyers Division). **Notice of public hearing issued 11/1/13 (public hearing: 1/21/14); letter soliciting public comment sent 11/11/13 (comments 1/3/14); letter seeking add'l information from petitioner sent 11/11/13 (response due 1/6/14).**
- I. Rule Petition 13-10: Petition to amend SCR Chapter 20 and Wisconsin Statute Chapters 800, 801, 802, and 809 relating to Limited Scope Representation filed 07/16/13 by the Director of State Courts. Preliminary memo distributed 9/9/13. Court discussed at 9/12/13 open conf.; court voted unanimously to schedule public hearing. **Court ordered**

public hearing to be scheduled in March.¹ Letter soliciting public comment to include Access to Justice Commission.

- J. Rule Petition 13-11: Petition to amend SCR 10.03(4)(b)2 relating to Pro Hac Vice Applications filed 07/17/13 by the Board of Administrative Oversight and the OLR. Also discussion on pro hac vice inquiry (re: interpretation of SCR 10.03(4)(b)). Preliminary memo distributed 9/10/13. Court discussed at 9/12/13 open conf.; court voted unanimously to solicit public comment and discuss at future open conf.² **Letter soliciting public comment (including Association for Corporate Counsel, WisTAF, and Access to Justice Commission) and letter seeking add'l information from petitioners sent 11/11/13 (responses due: 1/14/14).**
- K. Rule Petition 13-13: Petition to review change in State Bar Bylaws, filed 9/13/13 by Steven Levine (27 active members of the Bar signed petition). Court to consider this petition at same time it considers Rule Petition 13-07. **BRIEFING ORDER ISSUED 10/2/13; briefs due 1/3/14 (responses: 1/13/14). Notice of public hearing issued 11/1/13 (public hearing: 1/21/14).**

¹ The State Bar requested that 13-10 not be scheduled for public hearing until January or later because the Board of Governors won't be able to discuss until December.

² The State Bar requested that 13-11 not be scheduled for further discussion until January or later because the Board of Governors won't be able to discuss until December.