

STATE OF WISCONSIN  
SUPREME COURT

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In re:

PROPOSED AMENDMENT TO  
WISCONSIN STATUTE § 887.24.

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**MEMORANDUM IN SUPPORT OF  
PETITION OF WISCONSIN JUDICIAL COUNCIL  
FOR AN ORDER AMENDING  
WIS. STAT. § 887.24**

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ON BEHALF OF THE WISCONSIN JUDICIAL COUNCIL

November 15, 2013

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## INTRODUCTION

The Wisconsin Judicial Council respectfully petitions the Wisconsin Supreme Court to amend WIS. STAT. § 887.24 by repealing the current rule and replacing it with the Uniform Interstate Depositions and Discovery Act. This petition is directed to the Supreme Court's rule-making authority under WIS. STAT. § 751.12.

The proposed amendment is intended to set forth a procedure that can be easily and efficiently followed with a minimum of judicial oversight and intervention, and that is both cost-effective for the litigants and fair to the deponents.

## DISCUSSION

### **I. Uniform Interstate Depositions and Discovery Act**

The Uniform Interstate Depositions and Discovery Act ("UIDDA") is a model uniform law that allows out-of-state litigants to obtain third-party discovery in the enacting state.<sup>1</sup> The UIDDA was drafted by the National Conference of Commissioners on Uniform State Laws, and approved and recommended for enactment in all the states at its annual conference in 2007.<sup>2</sup>

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<sup>1</sup> For example, if Wisconsin adopts the UIDDA, it could be used by a Minnesota attorney to obtain relevant discoverable information from a non-party Wisconsin resident for use in a civil case filed in Minnesota.

<sup>2</sup> *Interstate Depositions and Discovery Act Summary*, UNIF. LAW COMM'N, <http://uniformlaws.org/ActSummary.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act> (last accessed November 5, 2013).

## **A. Uniform Law Commission**

The National Conference of Commissioners on Uniform State Laws, also known as Uniform Law Commission (“ULC”), was established in 1892.<sup>3</sup> It provides states with non-partisan model rules intended to bring clarity and stability to critical areas of state statutory law.<sup>4</sup> The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state.

ULC members must be lawyers, qualified to practice law, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote the enactment of uniform state laws in areas of state law where uniformity is desirable and practical.<sup>5</sup>

## **B. ULC Drafting Process**

Years are devoted to the drafting of a uniform act. The process starts with a committee to investigate each proposed act, and report whether it is desirable and feasible to draft a uniform law.<sup>6</sup> If a recommendation is approved, a drafting committee of commissioners is appointed.<sup>7</sup> Drafting committees meet throughout the year, and tentative drafts are not submitted to the entire ULC until they have received extensive committee consideration.<sup>8</sup>

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<sup>3</sup> UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT prefatory note (2007).

<sup>4</sup> *Id.*

<sup>5</sup> UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT prefatory note (2007).

<sup>6</sup> *ULC Drafting Process*, UNIF. LAW COMM’N at [http://www.uniformlaws.org/Narrative.aspx?title=ULC Drafting Process](http://www.uniformlaws.org/Narrative.aspx?title=ULC%20Drafting%20Process) (last accessed November 7, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

After a draft act receives committee approval, it is then submitted for initial debate of the entire ULC where it is carefully considered section by section.<sup>9</sup> An act must be considered at two or more annual meetings by all commissioners sitting as a Committee of the Whole.<sup>10</sup> Once the Committee of the Whole approves an act, it is tested by a vote of the states, with each state casting one vote<sup>11</sup>. A majority, and at least 20 states, must vote to approve an act before it can be officially adopted as a Uniform or Model Act.<sup>12</sup>

### **C. Reasons For the UIDDA**

The UIDDA's Prefatory Note explains that although every state has a rule governing foreign depositions, these rules differ in significant ways.<sup>13</sup> It is often unclear whether the procedure of the trial state or the discovery state controls and on what matters or issues.<sup>14</sup> Some of the most difficult issues include whether the trial state or discovery state should determine which privileges, such as the attorney-client privilege, should apply and also which state's privilege law should apply.<sup>15</sup>

The UIDDA brings uniformity to these inconsistencies. It is patterned after Rule 45 of the Federal Rules of Civil Procedure ("FRCP"), and establishes a simple clerical

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *ULC Drafting Process*, UNIF. LAW COMM'N at [http://www.uniformlaws.org/Narrative.aspx?title=ULC Drafting Process](http://www.uniformlaws.org/Narrative.aspx?title=ULC%20Drafting%20Process) (last accessed November 7, 2013).

<sup>12</sup> *Id.*

<sup>13</sup> UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT prefatory note (2007).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

procedure under which a trial state subpoena may be used to ultimately enforce a discovery state subpoena.<sup>16</sup>

Under the UIDDA, litigants may submit a subpoena issued under the authority of a court in the trial state to the clerk of court in the county of the discovery state where the discoverable materials or individuals are sought.<sup>17</sup> Upon receiving the out-of-state subpoena, the clerk in the discovery state issues a subpoena for service on the person or entity to which the original subpoena is directed.<sup>18</sup> The terms of the subpoena issued in the discovery state must incorporate the terms of the original subpoena.<sup>19</sup> The discovery state subpoena must also contain contact information for all counsel of record and any party not represented by counsel.<sup>20</sup>

The UIDDA requires minimal judicial oversight by eliminating the need for obtaining a commission or letters rogatory, or for filing a miscellaneous action before obtaining a subpoena in the discovery state.<sup>21</sup> It eliminates the need to obtain local counsel in the discovery state in order to obtain an enforceable subpoena.<sup>22</sup> Discovery authorized by the subpoena must comply with the rules of the state in which it occurs.<sup>23</sup> Motions brought to enforce, quash, or modify a subpoena, or for protective orders, must be brought in and governed by the laws of the discovery state.<sup>24</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT § 3(a) (2007).

<sup>18</sup> *Id.* § 3(b) (2007).

<sup>19</sup> *Id.* § 3(c) (2007).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* prefatory note (2007).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* § 5 (2007).

<sup>24</sup> *Id.* § 6 (2007).

## II. Proposed Amendment to Wis. Stat. § 887.24

The UIDDA is appropriate for adoption in Wisconsin for a number of reasons. It establishes a simple and efficient clerical procedure under which a trial state subpoena can be used to issue a discovery state subpoena. The clerk of court in the discovery state acts in a purely ministerial role, but in a manner that is “sufficient to invoke jurisdiction of the discovery state over the deponent.”<sup>25</sup>

The UIDDA is cost effective for litigants and it respects the discovery state’s significant interest in protecting its residents from unreasonable or burdensome discovery requests if they become non-party witnesses in an action pending in a foreign jurisdiction.

While the ULC generally urges states to adopt uniform acts exactly as written, to “promote uniformity in the law among the states,” this proposal, like those in most states that have adopted the UIDDA, contains some variations to conform it to state practice.<sup>26</sup>

Appendix 1 to this memorandum contains a red-lined comparison between the text of proposed s. 887.24 and the UIDDA.

### A. WIS. STAT. § 887.24 (2), Definitions

Like most states, the proposed rule contains some variations to conform it to Wisconsin practice. The definition of “foreign subpoena” was modified to add the phrase “in a civil action.” This language was added to clarify that proposed s. 887.24 is applicable only to civil cases.

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<sup>25</sup> *Id.* § 3 cmt. (2007).

<sup>26</sup> *See* Minutes of Meeting of North Dakota Joint Procedure Committee, January 26-27, 2012 at <http://www.ndcourts.gov/court/JP/Minutes/Jan2012.htm> (last accessed November 5, 2013). Mr. Eric Fish of the Uniform Laws Commission testified that the states had generally been adopting the act as is, making minor modifications to work with existing law.

Mr. Eric Fish of the Uniform Laws Commission testified before the North Dakota Joint Procedure Committee when it was considering adoption of a rule based on the UIDDA. Mr. Fish explained that “the group that developed the uniform act was instructed to develop a procedure for civil cases, so the group did not discuss whether the act should be applied to criminal actions. He said there was nothing in the act that was not compatible with a criminal action, but the act was not designed for criminal actions.” Mr. Fish also reported that most states have made the act applicable to civil actions either by making it part of their civil rules or by specifications in statute.<sup>27</sup>

The UIDDA is purposefully drafted to not extend its application to foreign countries.<sup>28</sup> The Judicial Council drafting committee specifically discussed the extent of the rule’s application and agreed that it should be limited, consistent with the UIDDA.<sup>29</sup>

Another variation in the proposed Wisconsin rule modifies the definition of “subpoena” to make it expressly applicable to subpoenas not only for oral depositions, but those upon written questions as permitted under current Wisconsin law.<sup>30</sup>

The term “subpoena” includes a subpoena *duces tecum*, but does not include a subpoena for the inspection of a person. For example, medical examinations in a personal injury case are separately controlled by state discovery rules (comparable to the application of Rule 35 of the FRCP).<sup>31</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT § 2, cmt. (2007).

<sup>29</sup> Compare to California’s UIDDA, which defines “Foreign jurisdiction” to mean “either of the following: (a) A state other than this state. (b) A foreign nation.” CAL.C.C.P. §2029.200.

<sup>30</sup> WIS. STAT. § 804.06.

<sup>31</sup> UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT § 2, cmt. (2007).

The definition of “state” was modified to include federally recognized Indian tribes. This was a recognized alternative offered in the UIDDA.<sup>32</sup>

**B. WIS. STAT. § 887.24 (3), Request For Issuance of Subpoena**

Subsection (3) of the proposed rule diverges from Section 3 of the UIDDA in several ways. The committee added the term “circuit” to paragraphs (a) and (b) to clarify that Wisconsin circuit courts have jurisdiction to issue subpoenas under this rule.

Subparagraphs (a) (1)-(5) of the proposed rule were added to clarify the procedure for obtaining a Wisconsin subpoena to obtain discovery from a witness in this state for use in a proceeding pending in another jurisdiction. For the benefit of the party seeking the subpoena and the court issuing it, the procedure is designed to be simple and expeditious. It is also the intent of the Judicial Council to minimize the burden on the clerk of circuit court. The proposed rule also includes a requirement that the subpoena state on its face that a receiving person has the right to object to the subpoena. This notice is consistent with protections available under current Wisconsin law.<sup>33</sup>

Paragraph (c) contains an important modification to the UIDDA, which was added to reflect Wisconsin practice. It provides that if a party to the out-of-state proceeding retains an attorney licensed to practice in Wisconsin, and that attorney receives the original or a true copy of the out-of-state subpoena, the attorney may issue a Wisconsin

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<sup>32</sup> UNIF. INTERSTATE DEPOSITIONS AND DISCOVERY ACT § 2 (2007).

<sup>33</sup> WIS. STAT. § 805.07 (3).

subpoena. This is consistent with Wisconsin law permitting a subpoena to be issued by, among others, “any attorney of record in a civil action or special proceeding.”<sup>34</sup>

The Judicial Council envisions the standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Wisconsin (the discovery state): A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). That lawyer may then check with the clerk’s office, in the Wisconsin county in which the witness to be deposed lives, to obtain a copy of its subpoena form. The lawyer will then prepare a Wisconsin subpoena so that it has the same terms as the Kansas subpoena. The lawyer will then submit the completed and executed Kansas subpoena and the completed but not yet executed Wisconsin subpoena to the clerk of circuit court in Wisconsin county where discovery is sought. In addition, the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that the Wisconsin subpoena is being sought pursuant to Wis. Stat. § 887.24 (3). The clerk of court, upon being given the Kansas subpoena, will then issue the identical Wisconsin subpoena (“issue” includes verifying that the subpoena complies with s. 887.24 (3) (a) and signing it).

The process server (or other agent of the party) will then serve the Wisconsin subpoena on the deponent in accordance with Wisconsin law.

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<sup>34</sup> WIS. STAT. 805.07 (1).

### **C. WIS. STAT. § 887.24 (4), Service and Enforcement of Subpoena**

Subsection 4 of the proposed rule is similar to Section 4 of the UIDDA; however it clarifies that it applies not only to a subpoena issued by a clerk of circuit court, but also to a subpoena issued by local counsel.

The proposed rule also specifies that the Wisconsin clerk of circuit court will not create a file when discovery is initiated nor collect a fee. This rule places the obligation of retaining the original subpoena and the proof of service on the lawyer initiating the discovery. A file will be created by the clerk if a special proceeding is commenced to enforce, quash, or modify the subpoena.

This modification is modeled on the version of the UIDDA that was recently adopted by the Iowa Supreme Court.<sup>35</sup> Iowa's new rule specifically requires the assignment of a case number and the payment of a fee only if an issue arises that requires a judge to issue a ruling. Otherwise, the clerk of court is the only one involved in the process. The Judicial Council drafting committee determined that this provision further clarified the process and is an efficient use of judicial resources.

The Judicial Council drafting committee also sought input from the Director of State Courts office to adapt the UIDDA to Wisconsin's administrative process and fee structure. According to the Director of State Courts office, Wisconsin courts do not currently charge for a s. 887.24 subpoena and no change was requested to that practice.<sup>36</sup> However, the Director of State Courts office indicated support for a fee when an

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<sup>35</sup> IOWA R. CIV. P. 1.1702(5).

<sup>36</sup> See also Wisconsin Circuit Court Fee, Forfeiture, Fine and Surcharge Tables, effective July 2, 2013.

application is filed to resolve a dispute over the subpoena or the underlying discovery request, pursuant to sub. (6) of the proposed rule.

Subsection 4 was also modified 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.

#### **D. WIS. STAT. § 887.24 (6), Application to Court**

Subsection (6) (a) of the proposed rule was modified from Section 6 of the UIDDA to clarify the notice requirements. Under the proposed rule, a summons is unnecessary to initiate the action, and service by mail or facsimile is permitted pursuant to current Wisconsin law.<sup>37</sup> Applications to enforce a subpoena must include proof of service of the subpoena on the witness. Every filing in the special proceeding must also be served on all parties to the special proceeding, including the witness.

Paragraph (b) was added to clarify procedural details for resolution of a dispute relating to discovery under the proposed rule.

Paragraph (c) was added to address the award of fees and expenses in a dispute relating to discovery under the proposed rule.

Paragraph (d) was added to clarify the procedure for reviewing a decision of a circuit court on a dispute arising in connection with discovery under the proposed rule.

#### **E. WIS. STAT. § 887.24 (8), Application to Pending Actions**

This subsection is very similar to Section 8 of the UIDDA, except “or filed after” was inserted to improve clarity.

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<sup>37</sup> WIS. STAT. § 801.14 (2).

### **III. Enactment of UIDDA in Other States**

Over thirty jurisdictions have adopted the UIDDA or some variation of it.<sup>38</sup> The Judicial Council's drafting committee reviewed variations to each section of the UIDDA that have been adopted in other jurisdictions, and debated which alternatives would work best in Wisconsin.

A number of states have adopted only the text of the UIDDA without adopting any comments (uniform or state specific), including: Delaware, D.C., Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Nevada, South Carolina, South Dakota, Tennessee, Utah, Virgin Islands, Virginia and Washington. The proposed Wisconsin rule contains both the Uniform Comments and Judicial Council Committee Notes indicating any deviations from the original language of the UIDDA. The drafting committee determined that this approach would provide helpful guidance to courts, practitioners and parties.

The following states did not adopt Section 7 (uniformity of application and construction) of the UIDDA: Georgia, Montana, Hawaii, South Dakota, and Tennessee. The Judicial Council drafting committee recommended inclusion of the language from Section 7 in the proposed rule.

The following states did not adopt Section 8 (application to pending actions) of the UIDDA: Georgia, Maryland, Montana, Nevada, New Mexico, New York, North Carolina, Pennsylvania, South Carolina, South Dakota, Tennessee, and the Virgin

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<sup>38</sup> Appendix 2 to this memorandum contains a chart listing the jurisdictions that have adopted the UIDDA as November 1, 2013.

Islands. The Judicial Council drafting committee elected to include this provision, modified to apply the rule to “cases pending on or filed after January 1, 2015.”

Most states did not adopt Section 9 (effective date) of the UIDDA. The Judicial Council proposal also does not include an effective date.

In addition to adoption in over 30 states, the UIDDA has been approved by the American Bar Association.<sup>39</sup> It has also been recommended for adoption by the Conference of Chief Justices.<sup>40</sup>

#### **IV. Judicial Council Drafting Process**

The Judicial Council undertook this project at the request of the Wisconsin Uniform Law Commission. At its September 21, 2012 meeting, the Judicial Council asked its Evidence & Civil Procedure Committee to study the UIDDA for possible recommendation for adoption in Wisconsin.<sup>41</sup>

Committee members reviewed current Wis. Stat. § 887.24 and noted that it contains little substance. In contrast, the UIDDA provides guidance regarding procedure and choice of law. Members noted that in cases involving foreign depositions, there are often questions regarding which jurisdiction's law will control. Members generally favored the UIDAA over current law because it resolves those questions by requiring

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<sup>39</sup> *Interstate Depositions and Discovery Act Summary*, UNIF. LAW COMM'N, <http://uniformlaws.org/ActSummary.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act> (last accessed November 7, 2013).

<sup>40</sup> See letter from Hon. Christine M. Durham, President, Conference of Chief Justices, to John A. Sebert, Executive Director, Uniform Law Commission, dated November 4, 2009.

<sup>41</sup> See Minutes of the Wisconsin Judicial Council, dated September 21, 2012 at <http://www.wicourts.gov/courts/committees/judicialcouncil/docs/minutes0912.pdf> (last accessed November 7, 2013).

objections, questions of privilege, and similar issues to be resolved by a Wisconsin judge following Wisconsin law. It could be quite expensive and inconvenient if a Wisconsin deponent was forced to litigate issues such as a motion to quash or an evidentiary issue in another jurisdiction. Also, under the UIDDA, a Wisconsin witness is deposed pursuant to Wisconsin's discovery rules.

The UIDDA further differs from current Wisconsin law in that it contains no reciprocity requirement. The Evidence & Civil Procedure Committee specifically discussed a reciprocity requirement. The committee agreed by consensus that the lack of reciprocity should not prevent the parties from moving forward with the fair and efficient resolution of a case based on all the relevant information.

The Evidence & Civil Procedure Committee unanimously approved a final rule draft at its August 6, 2013 meeting.<sup>42</sup> The committee's recommendation received unanimous support from the Judicial Council, with one legislative member abstaining.<sup>43</sup>

## CONCLUSION

The Judicial Council urges the court to adopt the UIDDA, with modifications to accommodate Wisconsin practice, as set forth in the petition accompanying this

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<sup>42</sup> Members of the Judicial Council's Evidence & Civil Procedure Committee included: Chair Thomas Shriner, Foley & Lardner, LLP; Thomas Bertz, Anderson, O'Brien, Bertz, Skrenes & Golla; William Gleisner, Law Offices of William Gleisner III; Catherine La Fleur, La Fleur Law Office; Benjamin Pliskie, Bloomer Peterman, S.C.; Hon. Mary Wagner, Kenosha County Circuit Court; Hon. Edward Leineweber, Bell, Moore & Richter, S.C.; and Richard Moriarty, Wisconsin Department of Justice.

<sup>43</sup> See Minutes of the Wisconsin Judicial Council, dated September 20, 2013 at <http://www.wicourts.gov/courts/committees/judicialcouncil/docs/minutes0913.pdf> (last accessed November 7, 2013).

memorandum. The proposed rule is simple and efficient, it requires minimal judicial oversight, it is cost effective, and it is fair to deponents.

Dated November 15, 2013.

RESPECTFULLY SUBMITTED,

WISCONSIN JUDICIAL COUNCIL

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## Appendix 1

### **Comparison of proposed text of Wis. Stat. § 887.24 and the Uniform Interstate Deposition and Discovery Act**

SECTION 1. SHORT TITLE. This ~~act~~ section may be cited as the Uniform Interstate Depositions and Discovery Act.

SECTION 2. DEFINITIONS. In this ~~act~~ section:

- (1) “Foreign jurisdiction” means a state other than ~~this state~~ Wisconsin.
- (2) “Foreign subpoena” means a subpoena issued in a civil action under authority of a court of record of a foreign jurisdiction.
- (3) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.
- (4) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, ~~a federally recognized Indian tribe~~, or any territory or insular possession subject to the jurisdiction of the United States.
- (5) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:
  - (A) Attend and give testimony at a deposition, either oral or upon written questions;
  - (B) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; ~~or~~
  - (C) Permit inspection of premises under the control of the person.

SECTION 3. REQUEST FOR ISSUANCE OF SUBPOENA.

(a) Submission of foreign subpoena to clerk. To request issuance of a subpoena under this section, a party ~~must~~ may submit a foreign subpoena to a clerk of circuit court ~~in~~ for the ~~{county, district, circuit, or parish}~~ in which discovery is sought to be conducted in this state. ~~A request for the issuance of a subpoena under this act does not constitute an appearance in the courts of this state.~~ , accompanied by the appropriate Wisconsin subpoena form which shall:

1. List the Wisconsin county in which discovery is to be conducted as the court from which the subpoena is issued.
2. Use the title of the action and its docket number from the foreign jurisdiction.
3. Incorporate the terms used in the foreign subpoena and include a copy of the foreign

subpoena as an attachment.

4. Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

5. Advise the person to whom the subpoena is directed that such a person has a right to petition the Wisconsin circuit court for a protective order to quash or modify the subpoena or provide other relief under Wis. Stat. § 805.07 (3).

(b) *Duties of clerk of court.* When a party submits a foreign subpoena to a clerk of circuit court in this state in compliance with par. (a), the clerk, in accordance with that court's procedure, shall promptly sign and issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) ~~A subpoena under subsection (b) must:~~

~~(A) incorporate the terms used in the foreign subpoena; and~~

~~(B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.~~ *Issuance by an attorney.* Alternatively, a party may retain an attorney who is licensed or otherwise authorized to practice law in Wisconsin to issue and sign the subpoena as an officer of the court pursuant to Wis. Stat. § 805.07.

*Issuance by an attorney.* Alternatively, a party may retain an attorney who is licensed or otherwise authorized to practice law in Wisconsin to issue and sign the subpoena as an officer of the court pursuant to Wis. Stat. § 805.07.

(c) *Issuance by an attorney.* Alternatively, a party may retain an attorney who is licensed or otherwise authorized to practice law in Wisconsin to issue and sign the subpoena as an officer of the court pursuant to Wis. Stat. § 805.07.

(d) *Appearance.* Obtaining and completing a subpoena under this subsection does not constitute an appearance in the courts of this state.

~~SECTION 4. SERVICE OF SUBPOENA. A subpoena issued by a clerk of court under Section sub. (3) must be served and enforced in compliance with [cite applicable rules or statutes of this state for service of subpoena] ch. 885. In issuing the subpoena, the clerk of circuit court shall not create a file, and shall not collect a fee. Instead, the individual responsible for service shall deliver a certificate of service or affidavit to the party that requested the subpoena. The party must retain the certificate of service or affidavit and furnish a copy to any party or to the deponent upon request.~~

~~SECTION 5. DEPOSITION, PRODUCTION, AND INSPECTION. [Cite rules or statutes of this state applicable to compliance with subpoenas] When a subpoena issued under this section commands a person to attend and give testimony at a deposition, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises] apply to subpoenas issued under Section 3. , the time and place and the manner of the taking of the deposition, the~~

production, or the inspection must comply with Wisconsin's rules relating to discovery, including but not limited to ch. 804.

SECTION 6. APPLICATION TO COURT. . (a) *Special proceedings.* An application to the circuit court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under Section 3 this section will commence a special proceeding. Applications and all other filings in the special proceeding must comply with the applicable rules or statutes of this state, including service pursuant to s. 801.14 (2), and must be filed with the circuit and be submitted to the court in the {county, district, circuit, or parish} in which discovery is to be conducted. Applications to enforce a subpoena must include proof of service of the subpoena.

(b) *Fees; assignment of case number.* 1. On filing an application under this section, a petitioner shall pay a fee as specified in ch. 814.

2. The circuit court in which the application is filed shall assign it a case number.

(c) *Reasonable attorney's fees and expenses.* The court in its discretion may award any prevailing party its reasonable attorney's fees and expenses.

(d) *Appeals.* A final order granting, denying, or otherwise resolving an application under this subsection is a final order for purposes of filing an appeal in accordance with s. 808.03 (1).

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 8. APPLICATION TO PENDING ACTIONS. This ~~{act}~~ section applies to requests for discovery in cases pending on ~~{the effective date of this {act}}~~. or filed after January 1, 2015.

SECTION 9. ~~EFFECTIVE DATE.~~ This ~~{act}~~ takes effect \_\_\_\_.

## Appendix 2

### **JURISDICTIONS WHERE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT HAS BEEN ADOPTED**

<b>Jurisdiction</b>	<b>Effective Date</b>	<b>Statutory Citation</b>
Alabama	1-1-2013	Ala. Code §§ 12-21-400 to 12-21-407.
Arizona	1-1-2013	16 A.R.S. RCP Rule 45.1.
California	1-1-2010	West's Ann.Cal.C.C.P. §§ 2029.100 to 2029.900.
Colorado	8-5-2008	C.R.S.A. §§ 13-90.5-101 to 13-90.5-107.
Delaware	7-12-2010	10 Del.C. § 4311.
District of Columbia	5-22-2010	D.C. Official Code, 2001 Ed. §§ 13-441 to 13-448.
Georgia	1-1-2013	Ga. Code Ann. §§ 24-13-110 to 24-13-16.
Hawaii	4-12-2012	HRS §§ 624D-1 to 624D-7.
Idaho	7-1-2009	I.R.C.P., Rule 45(i).
Indiana	6-30-2010	West's A.I.C. 34-44.5-1-1 to 34-44.5-1-11.
Iowa	2-4-2013	I. C. A. Rule 1.1702, IA R 1.1702
Kansas	7-1-2010	K.S.A. 60-228a.
Kentucky	7-15-2008	KRS § 421.360.
Maryland	10-1-2008	Code, Courts and Judicial Proceedings, §§ 9-401 to 9-407.
Michigan	4-1-2013	M.C.L.A. §§ 600.2201 to 600.2209.
Mississippi	7-1-2011	Miss. Code Ann., §§ 11-59-1 to 11-59-15.
Montana	10-1-2011	MT R RCP Rule 28(c)
Nevada	10-1-2011	NRS, §§ 53.100 to 53.200.
New Mexico	8-7-2009	NMRA, Rule 1-045.1.
New York	1-1-2011	McKinney's CPLR Law, § 3119.
North Carolina	12-1-2011	NCGSA, §§ 1F-1 to 1F-7.
North Dakota	3-1-2013	N.D.R.Ct. 5.1

Oregon	1-1-2012	OR Rules Civ. Proc., ORCP 38
Pennsylvania	12-24-2012	42 Pa.C.S.A. § 5331
South Carolina	3-30-2010	Code 1976, §§ 15-47-100 to 15-47-160.
South Dakota	7-1-2012	SDCL §§ 15-6-28.1 to 15-6-28.6.
Tennessee	7-1-2008	T.C.A. §§ 24-9-201 to 24-9-207.
Utah	5-5-2008	U.C.A.1953, 78B-17-101 to 78B-17-302.
Vermont	10-31-2011	Vermont RCP Rule 45.
Virgin Islands	11-24-2010	5 V.I.C. § 4922
Virginia	3-30-2009	Code 1950, §§ 8.01-412.8 to 8.01-412.15.
Washington	6-7-2012	West's RCWA §§ 5.51.010 to 5.51.902.