

PROCEDURES GOVERNING RULE MAKING PROCESS

PROCEDURES GOVERNING RULEMAKING PROCESS

1.01 Purpose

The purpose of ~~these~~ procedures governing the ~~rule-making~~rulemaking process is to: establish a rulemaking cycle; provide for the court's orderly and timely review of rule petitions; ~~to~~ provide for public notice and an opportunity for comment from members of the public, the court system, and the legal profession; ~~to~~ make a public record of all rule petitions; ~~to~~ govern pleading, practice and procedure in all judicial proceedings in all courts; ~~to~~ that do not affect the substantive rights of litigants; assist the efficient and effective administration of justice; and ~~to~~ aid the court in performing its ~~rule-making~~rulemaking responsibilities. The court shall post these rules and other information, such as forms and contact information related to the ~~rule-making~~rulemaking process on ~~its~~the court's Web site.

1.02 Definitions

In this chapter:

- (1) "Chief justice" means the chief justice of the supreme court of Wisconsin.
- (2) "Clerk" means the clerk of the supreme court of Wisconsin.
- (3) "Court" means the supreme court of Wisconsin.
- (4) "Rule" includes the following categories of rules promulgated by the supreme court:
 - (a) Rule relating to pleading, practice and procedure that does not affect a substantive right of parties.
 - (b) Rule relating to the administration of the courts.
 - (c) Rule relating to regulatory matters, including governance of the State Bar, admission to the ~~bar~~State Bar, governance of lawyers, and governance of judges.
- (5) "Rule petition" consists of a petition to create, amend or repeal a rule, a supporting memorandum, and a cover sheet.
- (6) "Rule petition cycle" encompasses a twelve month period that commences on September 1 and ends on August 31 at 5:00 p.m.

1.03 ~~Applicability~~Scope and Cycle

~~These procedures govern the court's rule-making process. The court may deviate from the procedures governing its rule-making process. Nothing in this chapter prohibits the court from enacting rules that it deems necessary on an emergency basis.~~

- (1) Scope. The process for considering and potentially adopting a rule petition operates within a cycle that encompasses: rule petition filing; court Web site posting; chief justice screening; public comment period; petitioner's response period; court administrative hearing; public hearing if ordered by the court; and court decision on the petition.
- (2) Designation. A rule petition shall be designated by the initial year of the cycle in which the rule petition is filed, with sequential numbers designating the chronology of filings. For example, if the first rule petition in a cycle is filed on November 11, 2013, it shall be designated "13-01" and the second rule petition in that cycle shall be designated "13-02," etc.
- (3) Consideration cycle. All rule petitions filed by May 1 will be considered by the court the following September. The court may then take final action on the rule petition or conclude that a public hearing is warranted. Public hearings will be held the following November between November 14 and November 30.
 - (a) If the court determines that a petition seeks a change that is technical or perfunctory in nature, the court may take immediate action without advance publication or public comment.
 - (b) Petitions warranting expedited review are considered pursuant to 1.14.

1.04 Initiating the Rule Petition

- (1) Filing.
 - (a) Any person may file ~~with the court~~ a rule petition. with the court.
 - (b) The court, on its own motion, may file a rule petition or propose the review of a rule or issue an order to determine whether it is appropriate or necessary to file a rule petition.
- (2) Number. The petitioner shall file with the court 10 copies of a rule petition.
- (3) Electronic rule petition.
 - (a) In addition to the copies required in sub. (2), the petitioner shall file with the court one copy of ~~athe~~ rule petition in electronic form by forwarding the rule petition in a format determined by the court and designated on the court's Web site.

1.05 Content of Rule Petition

- (1) Requirements. A rule petition shall be filed with the clerk and shall include all of the following:
 - (a) A petition.

- (b) A supporting memorandum.
- (c) A cover sheet form specified by the court.

(2) ~~A~~ Petition

- (a) The petition shall adhere substantially to the form and style used by the Wisconsin legislature in the preparation of bill drafts. The petition shall set forth the text of any rule or part of a rule proposed to be ~~created~~adopted, amended or repealed. If the petition amends an existing rule, the entire text of the rule, or part of the rule, to be amended by the rule petition shall be included, with the language to be removed shown as stricken through and language to be added shown as underlined. When new text will replace existing text, the stricken language shall precede the underscored language. If a rule or part of a rule is proposed to be repealed, the rule petition shall designate the rule, or part thereof, to be repealed and shall include the text to be repealed.
- (b) The petition shall state the grounds for the adoption, amendment or repeal of the rule and cite the source of the court's authority to ~~adopt~~grant the ~~rule proposed~~relief requested.
- (c) The petition shall contain the name of the petitioner requesting the rule and the petitioner's contact information, including phone number and email address.
- (d) A sample petition is available on the court's Web site www.wicourts.gov~~www.wicourts.gov~~.

(3) ~~A~~ Supporting Memorandum.

- (a) The supporting memorandum shall, at a minimum, address all of the following:
 1. Explain whether the petitioner seeks to ~~create~~adopt, amend, or repeal a statute or rule.
 2. Identify the statute or rule being ~~created~~adopted, amended, or repealed.
 3. Provide a thorough, detailed explanation of each rule proposed and reasons therefor.
 4. Explain how the rule proposed may affect procedural or substantive rights.
 5. Identify experiences of other state or federal courts that have adopted or rejected identical or substantially similar rule petitions, if applicable~~7.~~
 6. Analyze any state or federal rule upon which the rule is based.
 7. Analyze any fiscal and administrative impacts of the rule proposed.

8. List any related rule petitions pending before the court.

9. List any known previous action taken by the supreme court relating to the subject matter of the rule proposed.

10. Identify any related pending litigation in federal or state courts.

11. List any persons and entities that the petitioner has consulted about the rule petition.

12. List any known interested persons or entities.

13. Analyze how the rule proposed affects existing rules, statutes, or case law.

14. Include any request for a public hearing or a statement that no public hearing is necessary.

~~Justify any request for~~ 15. State whether expedited consideration is requested and the reasons therefore.

(4) The petition and supporting memorandum shall not exceed 20 pages.

(5) Cover Sheet.

(a) The petitioner shall complete and file the cover sheet form adopted by the court.

(b) The cover sheet is available on the court's Web site www.wicourts.gov

1.06 Initial Processing of Rule Petition

(1) Assignment. A rule petition is assigned to a court staff member for analysis and reporting to the court.

(2) Drafting comments. ~~The clerk~~ Court staff may forward the rule petition to the Legislative Reference Bureau (LRB) for review and substantive and technical drafting comments. Court staff shall forward any LRB comments to the petitioner.

(3) Web site. The rule petition shall be posted on the court's Web site.

1.07 ~~Screening of~~ Proceeding on Rule Petition

(1) Staff summary. The court staff member ~~under s. 1.06(1)~~ shall prepare a brief summary of the rule petition ~~for review.~~, including whether the petition is in compliance with SCR 1.05.

(2) Initial screening. The chief justice shall review the rule petition to determine whether the proposal is clearly stated, has arguable merit, is in the form required under this chapter, and has been discussed with interested persons or entities.

(3) Request for information. If the chief justice determines that a rule petition is unclear, lacks arguable merit, fails to comply with SCR 1.04 to 1.05, or further information is needed from interested persons or entities, the chief justice may direct the court staff member ~~under s. 1.06(1)~~ to ask the petitioner to supplement the rule petition and ~~to/or~~ seek comment from interested persons or entities before the rule petition proceeds ~~to a preliminary review by the court.~~ further. A copy of any letter to the petitioner and response shall be forwarded to the court.

(4) ~~Court action.~~ Public comment. The rule petition ~~proceeds~~may proceed to ~~a preliminary review by the public comment period of the rule petition cycle as provided in 1.08.~~

(5) Petitioner's response. Upon the close of the public comment period, the petitioner may respond as provided in 1.09.

(6) No later than 45 days after the close of the petitioner's response period, the court.

1.08 — Preliminary Court Review of Rule Petition

~~(1) Staff staff member shall prepare a comprehensive memorandum. The for the court staff member under s. 1.06(1) shall review the rule petition and comments filed by the Legislative Reference Bureau and prepare and circulate a. Such memorandum to shall consider the court summarizing comments of the rule petition LRB, the public and the petitioner, identifying issues, proposing any changes to the rule, making for the court's consideration, and make recommendations, and seeking questions from the court.~~

~~(2) Court review.~~ The court shall discuss the staff memorandum prepared under sub. (1) and the rule petition at an open administrative conference to decide the appropriate action to be taken.

~~(3)(a) If the court determines the petition has insufficient merit, court interest, or available resources, the court may dismiss the petition. If the court dismisses the petition, the court will briefly explain its rationale.~~

~~(3)(b) If the court determines there may be merit in the petition and resources may be available, the committee members proposed the following alternatives:~~

~~1. The supreme court may contact the petitioner to determine about whether the petitioner is willing or able to rework and revise the petition. If the petitioner is not able or willing to commit more time to the petition, the court could consider alternatives 2. through 3.~~

~~2. The supreme court may appoint pro bono counsel to assist the petitioner.~~

~~3. The supreme court may refer the petition to another entity (State Bar, Judicial Council, Board of Bar Examiner, Office of Lawyer Regulation, et al.).~~

~~(4) Court action. The court may take any action it deems appropriate, including any of the following:~~

~~(a) Adopt the rule proposed, or a modified version, without further comment.~~

~~(b) Reject the rule proposed without further comment.~~

~~(c) Circulate the rule petition for comment without a public hearing.~~

~~(d) Schedule the rule petition for public hearing.~~

~~(e) Refer the rule petition to another entity for its review and recommendation.~~

~~(f) Request further information or analysis from the petitioner or interested persons or entities.~~

1.09 Scheduling a Public Hearing; Soliciting Comments

~~(1) Criteria for public hearing. The court shall hold a public hearing when required by s. 751.12, stats., or when the court determines that a public hearing would be helpful to the court in its rulemaking function or when the rule has significant impact on the public, bar or bench. on the rule petition is warranted.~~

~~(2) Public Hearing procedures. If the court elects to hold a public hearing on a rule petition, the court shall provide notice of the public hearing and an opportunity to comment as follows:~~

~~(a) The court shall enter an order identifying the petitioner and rule,~~

~~explaining the rule to be created or changes to existing rules, and setting a date and time for a public hearing on the rule petition.~~

~~(b) The order scheduling the public hearing shall be distributed to interested~~

~~persons and entities, posted on the court's Web site, and published~~

~~pursuant to s. 751.12(3), stats., if applicable.~~

~~(c) The court shall issue a letter to interested persons and entities, as determined by the court, seeking comments on the rule petition.~~

~~(3) Comments without public hearing. If the court determines that a public hearing is not necessary or required, the court may provide an opportunity for comment as follows:~~

~~(a) The court shall issue a letter to interested persons and entities, as determined by the court, seeking comments on the rule petition.~~

~~(b) The court shall schedule the rule petition on an open administrative calendar following the expiration of the comment period.~~

1.1008 Comments on Rule Petition

(1) Filing. Any person may file with the court comments on a rule petition during the comment period and shall promptly forward a copy of the comment to the petitioner.

(2) Number. The person filing a comment under sub. (1) shall file with the court 10 copies of any comment.

(3) Length. Each public comment shall not exceed 15 pages.

(4) Duration. The public comment period shall commence when the petition for rule change is posted on the court's Web site and shall continue for a period of 45 days, unless such period is extended by the court.

(5) Electronic Comment. In addition to the copies required in sub. (2)~~(a)~~, a person filing a comment under sub. (1) ~~may~~shall file with the court a copy of the comment in electronic form by forwarding the comment to the clerk in a format determined by the court and designated on the court's Web site. The clerk shall post public comments on the court's Web site.

(4)~~-6~~ Content.

(a) The comment shall identify the rule petition to which it relates.

(b) The comment shall state clearly whether the person agrees with or objects to the rule petition or parts thereof and provide an explanation.

(c) The comment shall contain the name of the person or entity filing the comment and the name of a contact person, including phone number and email address.

(d) A court staff member shall review and screen comments for ~~in-appropriate~~ inappropriate content before posting on the court's Web site.

1.1109 Response by petitioner to comments

- (1) Filing. The petitioner ~~shall~~may file with the court ~~a response~~responses to any comments ~~by~~during the ~~date designated by the court~~responsive commenting period.
- (2) Number. The petitioner shall file with the court 10 copies of a response.
- (3) Length. Petitioner's responses shall not exceed 4 pages multiplied by the number of filed public comments.
- (4) Duration. Upon the close of the public comment period, the petitioner may respond for an additional 30 days, when such responsive period closes, unless such period is extended by the court.
- (5) Electronic Response. The petitioner shall file with the court one copy of a response in electronic form by forwarding the response in a format determined by the court and designated on the court's Web site. Responses by the petitioner shall be posted on the court's Web site.
- (4-6) Content. The petitioner's response shall include substantive discussion of the comments received. The petitioner shall explain whether the comments should be incorporated into the rule petition or rejected. The petitioner's responses shall not duplicate any information petitioner previously provided.

1.12 ~~Report to the~~ 10 Preliminary Court Review of Rule Petition

- ~~Prior to any public hearing and~~ (1) Court review. On or before September 30, the court consideration of the rule petition, the court staff member shall reviewdiscuss the rule petition, comments received, and ~~responses to comments~~staff memorandum prepared under 1.07(6) at an open administrative conference.
- (2) Criteria. The court shall consider whether the rule petition is within the court's jurisdiction, serves the court's rulemaking mission and is consistent with the court's statement of policy as set forth in this chapter.
 - (3) (a) If the court determines that the petition is not in proper form, has insufficient merit, court interest or available court resources, the court may dismiss the petition. If the court dismisses the petition, the court will briefly explain its rationale.~~prepare~~
 - (b) If the court determines the petition has arguable merit, the court may take any of the following actions:
 1. Contact the petitioner to determine whether the petitioner is willing or able to rework and revise the petition.
 2. Refer the petition to another entity such as the Judicial Council, State Bar, Board of Bar Examiners, Office of Lawyer Regulation, etc.

(4) Court action. The court may take any action it deems appropriate, including any of the following:

circulate a report(a) Adopt the rule proposed, or a modified version, without further comment.

(b) Dismiss the rule petition without further comment.

(c) Schedule the rule petition for public hearing.

(d) Refer the rule petition to another entity for its review and recommendation to the court.

(e) Request further information or analysis from the petitioner or interested persons or entities.

1.13-11 Scheduling a Public Hearing

(1) Criteria for public hearing. The court shall hold a public hearing when required by Wis. Stat. § 751.12, when the court determines that a public hearing would be helpful to the court in its rulemaking function or when the rule has significant impact on the public, bar or the court system.

(2) Public hearing procedures. The court shall provide notice of a public hearing as follows:

(a) The court shall enter an order identifying the petitioner and rule, briefly explaining the petition and setting a date and time for a public hearing on the rule petition.

(b) The order scheduling the public hearing shall be distributed to interested persons and entities, posted on the court's Web site, and published pursuant to s. 751.12(3), stats., if applicable.~~(4)~~

1.12 Public Hearing

(1) Public hearings shall be held between November 14 and November 30, on dates to be set by the court.

(2) At the public hearing ~~scheduled under s. 1.09(1)~~, the petitioner shall present the rule petition and interested persons and entities shall have an opportunity to ~~comment~~speak on the rule petition.

~~(2)-3)~~ The court may establish time limits for each presenter and speaker at the public hearing.

1.1413 Final action by the Court

(1) Public hearing procedures.

(a) If a public hearing is held under s. 1.~~09(2),12~~, the court shall discuss the rule petition in an open administrative conference following the public hearing.

(b) Upon completion of the public hearing ~~and a report by a court staff member and consideration of all relevant materials, including comments received and oral testimony, the court may take any of the following actions:~~

- ~~1. Adopt the rule proposed without modification.~~
- ~~2. Adopt a modified version of the rule proposed.~~
- ~~3. Decline to adopt the rule proposed or take further action.~~
- ~~4. Seek further information.~~
- ~~5. Take other action the court deems appropriate.~~

~~(2) Comments without public hearing.~~

~~(a) If the court solicited comments without a public hearing under s. 1.09(3), the court shall discuss the rule petition in an open administrative conference following the expiration of the comment period.~~

~~(b) Upon closure of the comment period and completion of a report by the court staff member under s. 1.06(1) and consideration of all relevant materials, including comments received and oral testimony, the court may take any of the following actions:~~

1. Adopt the rule proposed without modification.
2. Adopt a modified version of the rule proposed.
3. Decline to adopt the rule proposed or take further action.
4. Seek further information from the petitioner or interested parties.
5. Take other action the court deems appropriate.

~~1.15 Expedited Review of Rule Petition~~

~~(1)(2) Decision without public hearing.~~

~~(a) Upon the closure of the public comment period, the closure of the petitioner's responsive period, and the completion of a comprehensive staff report, the court shall~~

discuss the rule petition in an open administrative conference during the last week in September, as provided in 1.03(3), unless the rule petition is considered on an expedited basis due to its urgency.

(b) Upon consideration of all relevant materials, the court may take any of the following actions:

1. Adopt the rule proposed without modification.
2. Adopt a modified version of the rule proposed.
3. Decline to adopt the rule proposed or take further action.
4. Seek further information from the petitioner or interested parties.
5. Take other action the court deems appropriate.

1.14 Expedited Review of Rule Petition

(1) If the petitioner seeks expedited review, in addition to complying with 1.05(3)(a)15, petitioner shall file a separate motion for expedited review, explaining why expedited review is warranted and recommending a timetable for the court's consideration of the rule petition.

(2) If the court determines that ~~an emergency~~urgency exists requiring the immediate ~~adoption~~consideration of a petition, the court may take any action the circumstances require and consistent with ~~s.~~Wis. Stat. § 751.12, ~~stats.~~, if applicable.

~~—~~(2)(3) If the court determines that the petition seeks a change that is technical or perfunctory in nature, the court may take immediate action without advance publication or public comment.

1.1615 Distribution of Adopted Rule

(1) A rule is adopted by court order under SCR ch. 98.

(2) A court order adopting a rule under this chapter shall be published in the official state newspaper promptly after adoption ~~and by the state bar of Wisconsin in its official publication,~~ posted on the court's Web site and posted on the ~~court's~~State Bar of Wisconsin's Web site.

1.1716 Effective Date

The court shall designate the effective date of each rule ~~—~~, which shall affect all matters then pending.