



Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

110 E. MAIN STREET, SUITE 440

MADISON, WISCONSIN 53703

Nancy A. Kopp
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Commissioners

Telephone (608) 266-7442

August 7, 2014

To: April M. Southwick, Wisconsin Judicial Council

Re: Rule Petition 13-16, Petition to Amend Wis. Stat. § 887.24

Dear Attorney Southwick:

I am assisting the Wisconsin Supreme Court with its consideration of Rule Petition No. 13-16, which the Wisconsin Judicial Council filed on November 15, 2013. The court discussed this petition at open rules conference on June 25, 2014, and voted to schedule a public hearing. That hearing has been scheduled for September 29, 2014, at 9:45 a.m. The court also requested that I seek additional information about the rule proposal prior to the public hearing.

Generally summarized, the court seeks additional information about: potential ramifications of changing language in the Uniform Interstate Depositions and Discovery Act (“UIDDA”) to make it compliant with particular aspects of Wisconsin law and practice; how the proposed rule will operate when *pro se* litigants are involved; implications for the unauthorized practice of law; the effect of the proposed rule on court administrative staff, including the clerks of court; the court’s authority vis a vis imposition of fees; uniformity of subpoena forms; and whether the rule is consistent with other statutes and rules.

Specifically, your response to the following issues or questions is sought at this time:

- Please provide several specific examples of how the proposed rule will work in practice. Include examples involving *pro se* litigants, corporate parties, and where a special proceeding is commenced.
- Did the committee consider whether the proposed rule presents implications for the unauthorized practice of law (“UPL”), SCR Ch. 23?
 - The proposed rule eliminates the need to obtain local counsel for depositions. Does this change have UPL implications?
- Did the Uniform Law Commission provide comment on this proposal?

- Proposed Wis. Stat. § 887.24(3)(a) provides that to “request issuance of a subpoena under this section, a party may submit a foreign subpoena to a clerk of the circuit court for the county in which discovery is sought to be conducted in this state, accompanied by the appropriate Wisconsin subpoena form.” Is a standard subpoena form used throughout Wisconsin?
- Proposed Wis. Stat. § 887.24(3)(a)4 requires that when the subpoena is served it contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel. How will this provision operate if one *pro se* party does not want to disclose personal contact information to an adverse party--for example, in cases involving allegations of domestic violence?
- A Judicial Council Committee Note to Wis. Stat. § 887.24(3) indicates, in an example, that the “clerk of court, upon being given the Kansas subpoena, will then issue the identical Wisconsin subpoena,” and adds that “issue” includes verifying that the subpoena complies with Wis. Stat. § 887.24(3)(a) and signing it. Please explain what is required for verification and clarify any new obligations this provision imposes on a clerk of court.
- The Legislative Reference Bureau commented that, due to the use of passive voice in the proposed rule, it is sometimes unclear who has the duty to act. For example, proposed Wis. Stat. § 887.24(3)(d) states that “[o]btaining and completing a subpoena under this subsection does not constitute an appearance in the courts of this state.”
 - Please provide additional information on the meaning and purpose of proposed Wis. Stat. § 887.24(3)(d).
 - Is an explanatory note warranted?
- Proposed Wis. Stat. § 887.24(4) modifies the language from the UIDDA 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.
 - How does the proposed rule operate if a *pro se* party seeks to conduct a deposition?
 - What effect might this have on the administration of justice?
 - Is Wisconsin unique in requiring corporations to appear by counsel (subject to certain exceptions such as small claims proceeding)?
- Proposed Wis. Stat. § 887.24(5) requires compliance with Wisconsin’s “rules relating to discovery...” Is the term “rules” sufficiently inclusive? Should “rules” be replaced with “laws”?

- Is local counsel needed for special proceedings commenced under Wis. Stat. § 887.24(6)?
- Proposed Wis. Stat. § 887.24(6)(c) states that if a special proceeding is required, the court “in its discretion may award any prevailing party its reasonable attorney’s fees and expenses.”
 - What is the court’s authority to impose such a fee?
 - Did the committee consider whether this provision comports with rules in typical in-state discovery practices?

Please file your response by September 8, 2014, with the Clerk of Supreme Court, Attention: Deputy Clerk-Rules, P.O. Box 1688, Madison, WI 53701-1688. If possible, e-mail a Microsoft Word version of your response to *clerk@wicourts.gov*.

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.

You might wish to consult the court’s web site at <http://wicourts.gov/scrules/supreme.htm> to follow this rule petition. Court communications on the petition and any written comments filed with the clerk’s office are posted on the web site.

If you have specific questions regarding this request, please contact me at (608) 261-6641 or *julie.rich@wicourts.gov*.

Yours very truly,

/s/

Julie Anne Rich

Supreme Court Commissioner

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

List of Interested Parties for Supreme Court Rules Matters

Badger State Sheriffs Association, Attention: Executive Director
Board of Bar Examiners
Chief Circuit Court Judges
Christian Gossett, Winnebago County District Attorney
Circuit Court Judges
Court of Appeals, Attention: Chief Staff Attorney
Court of Appeals Judges
Diane M. Fremgen, Clerk of Supreme Court
Director of State Courts
Eastern District of Wisconsin Bar Association, Attention: Katy Borowski, Executive Director
Legal Action of Wisconsin
Marquette Law School, Attention: Joseph D. Kearney
Office of State Public Defender, Attention: Kelli S. Thompson
Office of the Attorney General, Attention: J.B. Van Hollen
Shelley M. Fite, Local Attorney Manager, State Public Defender-Appellate Division
State Bar of Wisconsin, Attention: George Brown, Executive Director
State Bar of Wisconsin, Attention: Lisa Roys, Public Affairs Director
State Bar of Wisconsin, Attention: Robert Gagan, President
Steven Levine, Attorney
U.W. Law School, Attention: Margaret Raymond
Western District Bar Association of Wisconsin, Attention: Lynn M. Stathas
Wisconsin Asian Bar Association, Attention: Robin Dalton
Wisconsin Association for Justice, Attention: Jane E. Garrott, Executive Director
Wisconsin Association of African American Lawyers, Attn: DeAngela Luna
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: Pam Radtke
Wisconsin Counties Association, Attention: David Callender
Wisconsin Defense Counsel, Attention: Jane Svinicki and Andy Cook
Wisconsin District Attorneys Association, Attention: Margaret Drees, Executive Director
Wisconsin Family Court Commissioners Association, Attention: Sandra Grady, Exec. Secretary
Wisconsin Hispanic Lawyers Association, Attention: Micabil Diaz Martinez
Wisconsin Judicare, Inc., Attention: Rosemary Elbert
Wisconsin Judicial Commission, Attention: Jeremiah VanHecke
Wisconsin Judicial Council, Attention: April Southwick
Wisconsin Juvenile Court Clerks Association, Attention: Joy Pecha
Wisconsin Municipal Judges Association, Attention: Honorable Scott Letteney
Wisconsin Newspaper Association, Attention: Executive Director
Wisconsin Registers in Probate Association, Attention: Nancy Dowling
Wisconsin Sheriff & Deputy Sheriff Association, Attention: James I. Cardinal, Exec. Dir.
Wisconsin State Attorneys Association, Attention: Nancy Wettersten
Wisconsin Trial Judges Association, Attention: Honorable Mary M. Kuhnmuench
Wisconsin Tribal Judges Association, Attention: Amanda Rockmann, President

List of Additional Interested Parties – if any

Clerks of Court

District Court Administrators

Records Management Committee

Richard B. Long, Attorney, Member of the Uniform Law Commission

Timothy Pierce, State Bar of Wisconsin Ethics Council

Uniform Law Commission, Attention: Terry Morrow, Legislative Director & Legal Counsel

Wisconsin Judicial Council Evidence & Civil Procedure Committee Members