



STATE BAR OF WISCONSIN

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December 1, 2016

Clerk of the Supreme Court
Attn: Deputy Clerk-Rules
P.O. Box 1688
110 East Main Street, Suite 215
Madison, WI 53701-1688

RE: Petition 16-04 (Limited Scope Representation)

To the Honorable Justices:

The State Bar of Wisconsin's Board of Governors voted unanimously on September 16, 2016 to approve Petition 16-04 related to limited scope representation. The State Bar's Ethics Committee and Family Law and Dispute Resolution sections have expressed support. Comments from the two sections are attached for your consideration.

If you have any additional questions, please do not hesitate to contact Public Affairs Director Lisa Roys.

Sincerely,

Francis W. Deisinger, President
State Bar of Wisconsin

Family Law section comments:

On August 2, 2016, the Supreme Court's Public Policy Advisory Committee (PPAC) unanimously voted to approve the filing of a Petition by PPAC's Limited Scope Representation--Mediation (LSR-M) sub-committee. The Petition is to amend Supreme Court Rule section 20:2.4 to allow lawyer mediators to draft court documents. The State Bar of Wisconsin Family Law Section Board of Directors hereby informs the Board of Governors that we support the Petition, and urges the Board of Governors to support the proposal if and when it comes before the Board.

The amendments to SCR 20:2.4, Rules of Professional Responsibility for Lawyers, would permit lawyer-mediators to draft the documents required to implement agreements reached in mediation in Chapter 767, Wis. Stats. Family court cases. Under the proposal, a lawyer-mediator would be required to maintain neutrality and obtain specific informed consent of the parties to the mediation. Drafting by a lawyer-mediator would not create a lawyer-client relationship. However, the lawyer-mediator would be required to have the same degree of competence and exercise the same diligence under the Rules of Professional Responsibility as if there were a lawyer-client relationship. The lawyer-mediator would be allowed to file the documents with the court, but would not be allowed to appear on behalf of either or both parties. Documents prepared by lawyer-mediators would be required to clearly state that they were "prepared with the assistance of a lawyer acting as mediator."

PPAC LSR-M's proposal has been presented to several groups and has widespread support. The State Bar Ethics Committee unanimously approved the proposal on February 12, 2016. The Wisconsin Family Court Commissioners Association endorsed it at their 2016 Spring Conference. The proposal has been approved by the Office of Lawyer Regulation (OLR), and the Wisconsin Lawyers Mutual Insurance Company (WILMIC). It has also been reviewed by many other interested committees and organizations, and the feedback has been overwhelmingly supportive. Those organizations include the Leander Foley Matrimonial Inns of Court, the Society of Family Lawyers, the Dane County Bar Association, Judicare, the Wisconsin Judicial Council, the Milwaukee Family Court Mediation mediators, the Wisconsin Chapter of the Association of Family and Conciliation Courts (AFCC WI), Legal Aid Society, Legal Action of Wisconsin, Milwaukee family court judges, the Milwaukee Bar Association Alternative Dispute Resolution Section, the Wisconsin Association of Mediators (WAM), attendees at the February 4, 2016 "*The Voice of the Child*" inter-disciplinary seminar, and attendees at the *20th Anniversary Celebration of the Marquette University Law School Alternative Dispute Resolution Program*.

The Rule amendment is important to the families and children who would benefit by lawyer mediators drafting court documents, to family lawyers who mediate, and to the court system. Mediation is a dispute resolution process that benefits families by keeping them out of court. Being adversary litigants in family court can irreparably damage parents' future ability to work together in the best interests of their children. Mediation can prevent that. Drafting of stipulations and proposed orders, Marital Settlement Agreements, and Findings of Fact, Conclusions of Law and Judgments by lawyer mediators when neither party has an attorney can ensure that those documents are timely, properly, and precisely drafted. For these reasons, we urge the Board of Governors to support the Petition.

Dispute Resolution section comments:

The Dispute Resolution Section of the Wisconsin Bar Association has reviewed the proposed language for Supreme Court Rule 20:2.4 and would like to unanimously provide support for this amendment. The amendments to SCR 20:2.4, Rules of Professional Responsibility for Lawyers, would permit lawyer-mediators in a limited scope representation to draft the documents required to implement agreements reached in mediation in Chapter 767, Wis. Stats. Family Law strengthen court cases.

The Dispute Resolution Section supports approximately 700 lawyer/mediators throughout Wisconsin. The effect of this change will allow our members to continue to assist clients throughout their disputes by strengthening our ability to ensure that settlement terms negotiated in mediation become Orders of the Court. With the required informed consent, we believe that lawyer/mediators will be able to guide clients through the process of a family law dispute without then leaving them to the Court system with no guidance in how to complete their agreements. Furthermore, the changes to the rule will allow lawyer/mediators to finalize resolutions that should alleviate pressures on Court's calendars for matters that have a greater need.