



# Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

110 E. MAIN STREET, SUITE 440

MADISON, WISCONSIN 53703

Nancy A. Kopp  
Julie A. Rich  
David W. Runke  
Mark A. Neuser  
Commissioners

Telephone (608) 266-7442

January 21, 2020

**To: Interested Persons – See Attached List**

Re: Rule Petition 19-16, In the Matter of Amending Wis. Stat. § 802.05(2m) relating to Ghostwriting, a Form of Limited Scope Representation

Greetings:

On January 17, 2020, the Wisconsin Supreme Court conducted a public hearing on rule petition 19-16 filed May 15, 2019 by Attorney James E. Goldschmidt, on behalf of Quarles & Brady, LLP. The rule petition asks the court to amend Wis. Stat. § 802.05(2m), to restore the rule to the version as originally created by the court. The petition asks the court to eliminate language added by the legislature in 2018 that imposed a requirement that lawyers who assist otherwise unrepresented persons in the preparation of documents include their name and State Bar number on the document.

During the public hearing, questions were asked and answered about the respective authority of the court and the legislature to act in this matter. In re Constitutionality of Section 251.18, 204 Wis. 501, 236 N.W. 717, 721 (1931), a case evaluating the constitutionality of the precursor to Wis. Stat. § 751.12, states inter alia, that: "it is concluded that the power to regulate procedure, at the time of the adoption of the constitution, was considered to be essentially a judicial power, or at least not a strictly legislative power, and that there is no constitutional objection to the delegation of it to the courts by the legislature." The court further reasoned that, since the legislature could delegate power, it could also take it back. Therefore, the court deemed the statute constitutional, ruling that the legislature did not offend the separation of powers doctrine by delegating and, at the same time, retaining the authority to regulate practice and procedure.

At the closed administrative rules conference following the public hearing, the court discussed this language. The question was raised whether the reference to a legislative delegation of power in the above-reference case, read in conjunction with Wis. Stat. § 751.12(4) (stating that "[t]his section shall not abridge the right of the legislature to enact, modify, or repeal statutes or rules relating to pleading, practice, or procedure"), implies that the court is constrained in its authority to essentially nullify a legislative act. But see John F. Jelke Co. v. Hill, 208 Wis. 650, 660, 242 N.W. 576 (1932) (stating "[i]n Wisconsin the jurisdiction and power of the courts is conferred not by act of the legislature but by the constitution itself. While the legislature may regulate in the public interest the exercise of the judicial power, it cannot, under the guise of regulation, withdraw that power or so limit and circumscribe it as to defeat the constitutional purpose.")

The court determined that it would benefit from additional briefing on this issue before rendering a decision on the rule petition. Therefore, it invites additional written comment from the petitioner on the question of the respective authority of the court and legislature to act in this matter. The court also requests briefing from the petitioner on the question of how the petitioner's alternative suggestion (that the court suspend the existing rule) would be accomplished procedurally. See Wis. Stat. § 751.12(2) ("[a]ll statutes relating to pleading, practice, and procedure may be modified or suspended by rules promulgated under this section.") Interested persons may also comment on these issues if they choose.

Supplemental comments to the rule petition should be limited to these issues and should be filed by February 4, 2020, with the Clerk of Supreme Court, Attention: Deputy Clerk-Rules, P.O. Box 1688, Madison, WI 53701-1688. Please also email a Microsoft Word version of your response to *clerk@wicourts.gov*. The court does not anticipate that it will accept responses to these supplemental filings. If the court requires additional information, the court will request it.

Supplemental written comments will be posted on the court's website at <https://wicourts.gov/scrules/pending.htm>.

On behalf of the court, thank you very much for your assistance in this matter. If you have specific questions regarding this matter, please contact me by mail at P.O. Box 1688, Madison, WI 53701-1688, by telephone at 608-261-6642, or by email at *julie.rich@wicourts.gov*.

Very truly yours,

/s/

Julie Anne Rich

Supreme Court Commissioner

cc: Chief Justice Patience Drake Roggensack  
Justice Ann Walsh Bradley  
Justice Annette Kingsland Ziegler  
Justice Rebecca Grassl Bradley  
Justice Daniel Kelly  
Justice Rebecca Frank Dallet  
Justice Brian K. Hagedorn  
Attorney James E. Goldschmidt

**List of Interested Persons for Supreme Court Rules Matters**

Badger State Sheriffs Association, Attention: Executive Director  
Board of Administrative Oversight, Attention: Joseph M. Russell, Chair  
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  
Deputy Director of Court Operations, Diane M. Fremgen  
Court Operations, Kat Carpenter  
Court Operations, Ann Olson  
Court Operations, Krista Miller  
Dean Dietrich, Attorney  
Clerk of Supreme Court and Court of Appeals, Sheila T. Reiff  
Director of State Courts, Honorable Randy Koschnick  
Eastern District of Wisconsin Bar Association, Attention: Katy Borowski, Executive Director  
Hamilton Consulting Group, Attention: Andrew C. Cook, Paige Scobee,  
Rebecca Hogan and R.J. Pirlot  
Legal Action of Wisconsin, Attention: David Pifer, Executive Director  
Legal Aid Society of Milwaukee, Attention: Colleen Foley, Executive Director  
Marquette University Law School, Attention: Joseph D. Kearney  
Office of Lawyer Regulation, Attention: Keith Sellen, Director  
Office of State Public Defender, Attention: Kelli S. Thompson  
Office of State Public Defender, Attention: Jeremy C. Perri  
Office of the Attorney General, Attention: Terri Surita  
State Bar of Wisconsin, Attention: Larry Martin, Executive Director  
State Bar of Wisconsin, Attention: Lisa Roys, Public Affairs Director  
State Bar of Wisconsin, Attention: Jill M. Kastner, President  
University of Wisconsin Law School, Attention: Margaret Raymond  
Western District Bar Association of Wisconsin, Attention: Ann Peacock  
Wisconsin Asian Bar Association, Attention: Robin Dalton  
Wisconsin Association for Justice, Attention: Bryan Roessler, Executive Director  
Wisconsin Association of African American Lawyers, Attn: Jessica Butler  
Wisconsin Association of Criminal Defense Lawyers, Attention: Peter McKeever  
Wisconsin Association of Judicial Court Commissioners, Attention: Susan Schaubel  
Wisconsin Bankers Association, Attention: Attorney John Knight  
Wisconsin Bankers Association, Attention: Kris Clevin, Vice President-Legal  
Wisconsin Clerks of Circuit Court Association, Attention: Penny Carter  
Wisconsin Counties Association, Attention: Marcie Rainbolt  
Wisconsin Defense Counsel, Attention: Jenni Kilpatrick, Executive Director  
Wisconsin District Attorneys Association, Attention: Greta Mattison, Executive Director  
Wisconsin Family Court Commissioners Association, Attention: David Pruhs, Exec. Secretary  
Wisconsin Hispanic Lawyers Association, Attention: Cynthia Herber  
Wisconsin Judicare, Inc., Attention: Kimberly Haas, Executive Director

Wisconsin Judicial Commission, Attention: Jeremiah VanHecke  
Wisconsin Judicial Council, Attention: Thomas W. Bertz  
Wisconsin Juvenile Court Clerks Association, Attention: Samuel Christensen  
Wisconsin Municipal Judges Association, Attention: Honorable Robert Kupfer  
Wisconsin Newspaper Association, Attention: Beth Bennett, Executive Director  
Wisconsin Registers in Probate Association  
Wisconsin Sheriffs & Deputy Sheriffs Association, Attention: Sandy Schueller  
Wisconsin State Attorneys Association, Attention: John Gelhard  
Wisconsin Trial Judges Association, Attention: Honorable Gregory Gill, Jr.  
Wisconsin Tribal Judges Association, Attention: Honorable Gwendolyn Topping, President

**Additional Interested Persons:**

Attorney Michael Burton  
Attorney Katherine Charlton  
Attorney Samantha Huddleston  
Attorney Dennis Milbrath  
Attorney Charles Barr  
Attorney Ksenija Kokanovic  
Gimbel, Reilly, Guerin & Brown LLP  
Attorney Mary Ferwerda  
Attorney Kent Tess-Mattner  
Attorney James Davies  
Attorney Mark Darnieder, Jr.  
Attorney Barbara A. O'Brien  
Attorney Eric Hart  
Attorney Ann Comer  
Attorney Alexander E. Foundos  
Attorney Jeremy Shapiro-Barr  
Attorney Julie Yeado  
Attorney Margaret Richards  
Godfrey & Kahn, S.C.  
Legal Action of Wisconsin, Inc.  
Attorney Cassidy Sandoval  
Attorney Michael J. Gonring  
Attorney Michael P. Malone  
Attorney James R. Cauley  
Wisconsin Justice Initiative  
Pro Bono Institute  
State Bar of Wisconsin, Board of Governors  
Access to Justice  
Attorney Heiner Giese  
State Representative Robert Brooks  
Attorney Aaron Thomas Olejniczak  
Honorable Michael Dwyer

Attorney Kyla N. Motz  
Attorney Rebecca E. Rapp  
Attorney Raphael F. Ramos  
Attorney Margaret Niebler-Brown  
Attorney Elizabeth Anne Groeschel  
Attorney Daniel J. Hoff