STATE OF WISCONSIN

IN SUPREME COURT

In the Matter of Amending Wis. Stat. § 802.05(2m) relating to Ghostwriting, a Form of Limited Scope Representation

Rule Petition 19-16

PETITIONER'S SUPPLEMENTAL POST-HEARING COMMENTS

On January 17, 2020, this Court held a public hearing on Rule Petition 19-16. After the hearing, the Court requested supplemental comments on the Court's authority under Wis. Stat. § 751.12 to modify Wis. Stat. (Rule) § 802.05(2m) as requested.

Under the plain language of Wis. Stat. § 751.12(2), the Court possesses authority to "modif[y]" or "suspend[]" Wis. Stat. (Rule) § 802.05(2m), which is a "statute relating to pleading, practice, and procedure." Petitioner has asked the Court to *modify* the rule by striking thirteen words from its text. There is no call for the Court to *repeal* the statute; although the Court has "repealed" legislatively enacted procedural statutes at various points in the recent past, no such remedy is requested here. Because the relevant provision of Wis. Stat. (Rule) § 802.05(2m) relates squarely to practice and procedure within the courts—not any substantive rights—the Petition falls squarely within the Court's authority to grant.

The Court also requested supplemental comments on its ability to *suspend* the attorney identification requirement of Wis. Stat. (Rule) § 802.05(2m), an alternative raised at the hearing. Petitioner discusses this alternative at the conclusion of these comments.

I. This Court has constitutional and statutory authority to modify Wis. Stat. (Rule) § 802.05(2m) as requested.

Rule Petition 19-16 asks the Court to act within its rule-making power to modify Wis. Stat. (Rule) § 802.05(2m), a procedural rule governing whether and how attorneys must identify themselves on legal papers they assisted in drafting. As recognized in decisions dating back to at least 1931, the Court has the constitutional and statutory authority to make this change.

The fact that the language at issue was added by the Legislature does not alter this conclusion. The Court routinely modifies procedural rules previously modified by the Legislature, and this case is no different. The critical question is not the *source* of the statutory text at issue, but rather whether the rule is *procedural* or *substantive*. In past decisions, the Court has correctly identified constraints on its authority to modify civil rules arguably conferring substantive rights—and even in some of those cases, the Court nonetheless granted relief. This Petition, however, does not ask the Court to wade into the murkier waters of "repeal" or substantive legal rights; it stands firmly on the dry ground of modifications to procedural rules.

A. The Court and the Legislature share coequal authority to promulgate and modify rules of procedure.

Article VII, section 3, clause 1 of the Wisconsin Constitution states: "The supreme court shall have superintending and administrative authority over all courts." Pursuant to that authority, Wis. Stat. § 751.12 provides:

> (1) The state supreme court shall, by rules promulgated by it from time to time, regulate pleading, practice, and procedure in judicial proceedings in all courts, for the purposes of simplifying the same and of promoting the speedy determination of litigation upon its merits. The rules shall not abridge, enlarge, or modify the substantive rights of any litigant.
>
> (2) All statutes relating to pleading, practice, and procedure may be modified or suspended by rules promulgated under this section.
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> (4) This section shall not abridge the right of the legislature to enact, modify, or repeal statutes or rules relating to pleading, practice, or procedure.

The plain text of the statute is clear: the Court has express authority to "regulate pleading, practice, and procedure in judicial proceedings,"[1] and may exercise that authority through "rules promulgated under this section."[2] Those rules may "modif[y]" or "suspend[]" "[*a*]*ll statutes* relating to pleading, practice, and procedure."[3] Thus the Court has power to modify acts of the Legislature *if* those acts "relat[e] to pleading, practice, and procedure."

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[1] Wis. Stat. § 751.12(1).
[2] Wis. Stat. § 751.12(2).
[3] *Id.* (emphasis added).

The Court recognized this power at least as early as 1931, in what has come to be called the *Rules of Court Case*.[4] That case considered whether the Legislature could delegate rule-making authority to the Court consistent with the constitutional separation of powers, as it purported to do in Wis. Stat. § 251.18 (the precursor to Wis. Stat. § 751.12).

Analyzing an unbroken line of precedent dating back to the King's Bench in England, the Court concluded that this legislative delegation was constitutional. Specifically, the Court held that the power to regulate judicial procedure was inherently a shared power: neither exclusively legislative nor exclusively judicial. As a result, the Legislature could delegate it to the Court via statute without violating the separation of powers.

In so ruling, the Court rejected the contention that this power is exclusively legislative. If it were, then the Legislature could not delegate it, for it is "fundamental and undeniable that no one of the three branches of government can effectively delegate any of the powers which peculiarly and intrinsically belong to that branch."[5] Instead, the authorities "anterior to and at the time of the adoption of the constitution" established that "the power to regulate procedure was at that time considered a judicial power, or at least that it never was considered to be a purely or distinctively legislative power."[6]

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[4] *In re Constitutionality of Section 251.18*, 204 Wis. 501, 236 N.W. 717 (1931).
[5] *Id.* at 718.
[6] *Id.* at 718–19.

The major premise of the *Rules of Court Case*—that the power to regulate judicial procedure is inherently shared between the Legislature and the Court—also led it to reject the notion that it was impossible for this power to exist simultaneously in both branches.[7] This concern was raised in reference to what is now Wis. Stat. § 751.12(4), which expressly preserves the Legislature's "right" to act in the same space. In the Court's view, however, this concern did not go to the constitutionality of the statute, but to its "wisdom." In fact, while the Court had no objection to the Legislature retaining authority it had also delegated, it noted that the statute was intended "to *relieve* against the inflexibility and difficulty of repeal or modification, which has constituted the principal objection to regulation by legislative code," and warned that "a frequent exercise *by the Legislature* of the power which it has reserved to repeal rules of courts would tend to impair the accomplishment of this purpose."[8]

In other words, the principal purpose of what is now Wis. Stat. § 751.12 was to clarify that primary responsibility for the rules of judicial procedure rested with the Court, not the Legislature. Consistent with that purpose, the same act provided that "all statutes relating to pleading, practice and procedure shall have force and effect only as rules of court and shall remain

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[7] *Id.* at 722.

[8] *Id.* (emphasis added).

in effect unless and until modified or suspended by rules promulgated pursuant hereto."[9] That is, by its own act, the Legislature re-designated its own procedural statutes as *court rules*, shifting them into the domain of the judiciary while investing this Court with authority to modify them thereafter.

B. The Legislature may not use its rulemaking authority to invade the judicial province.

Subsequent case law has affirmed the Court's conclusion in the *Rules of Court Case:* the Court has inherent power to regulate pleading, practice, and procedure in Wisconsin's courts.[10] These decisions also recognize an important corollary: at some point, legislation may go too far in regulating the business of the courts, crossing into the Judiciary's exclusive domain. "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."[11]

For instance, in the *Integration of Bar Case*, the Court considered the Legislature's ability to regulate qualifications for and admission to the bar. While the Court granted that the Legislature had some leeway to act in this

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[9] *Id.* at 718.

[10] *See, e.g., Integration of Bar Case*, 244 Wis. 8, 47, 11 N.W.2d 604 (1943) ("the power to make procedural rules is undoubtedly a judicial power and may be exercised by the court without legislative sanction"); *Matter of E.B.*, 111 Wis. 2d 175, 330 N.W.2d 584, 588 (1983) ("We have consistently recognized that the legislature and the judiciary share the power to regulate practice and procedure in the judicial system. The supreme court has inherent constitutional power to regulate matters related to adjudication. . . .").

[11] *John F. Jelke Co. v. Hill*, 208 Wis. 650, 660, 242 N.W. 576 (1932).

area to the extent it implicated the general welfare, "the court must of necessity, in the exercise of its judicial function, retain some measure of control over the organization; otherwise the court would be deprived of its unquestioned right to determine who shall be admitted to the practice of the law."[12] Thus, "[w]hile the court recognizes the power of the Legislature to fix minimum standards of qualifications to be required of attorneys at law, it will determine for itself whether the qualifications so fixed invade the judicial field or embarrass the court in the discharge of its functions."[13]

As these decisions confirm, any statutory delegation by the Legislature merely recognizes the power already conferred upon this Court by Article VII, section 3, clause 1 of the Wisconsin Constitution. That the power is not *exclusively* judicial is confirmed by the same authorities, but always with the caveat that the Legislature, in exercising its own role in this area, may not invade the exclusive province of the Judiciary.

Here, Petitioner does not argue that the 2018 amendment to Wis. Stat. (Rule) § 802.05(2m) crossed this line. However, the reality is not far off: the attorney self-identification requirement comes much closer to the Court's supervision of the bar than it does to the Legislature's concern with the general welfare. This calls for deference *by*, not *to*, the Legislature.

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[12] *Id.* at 50.
[13] *Id.* at 51.

C. The Court's rulemaking authority is limited to procedural rules, regardless of which branch acted first or last.

At the same time that the Legislature must not exercise its shared authority to invade the judicial domain, the Court must take care not to use its rulemaking authority to alter substantive rights. This limitation is included in the statutory text: "The rules shall not abridge, enlarge, or modify the *substantive rights* of any litigant."[14] And it has been recognized in the case law since Wis. Stat. § 751.12(1) was enacted.[15] The Court has cited the same substantive-procedural distinction in tolerating arguable overreaches by the Legislature in matters of judicial authority.[16]

As the Court well knows, the distinction between procedural and substantive rulemaking can be hazy. But a review of the Court's recent rulemaking decisions reveals that this—not whether, when, or how recently the Legislature has acted—is the operative test. If the requested rule change would alter substantive rights, the Court is without legitimate power to act. Conversely, if the requested rule change is procedural, then it is immaterial whether the rule first arose as a statute, or which branch acted last.

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[14] Wis. Stat. § 751.12(1) (emphasis added).

[15] *See, e.g., Rules of Court Case*, 236 N.W. at 718 (quoting this provision); *Integration of Bar Case*, 11 N.W.2d at 622 ("In the exercise of the rule-making power this court has exercised great caution to the end that no changes be made in the substantive law.")

[16] *See, e.g., Integration of Bar Case*, 11 N.W.2d at 621 ("While the power to make procedural rules is undoubtedly a judicial power . . . ., nevertheless the court over a long period of time accepted the procedural rules made by the Legislature largely because they related to substantive as well as to procedural matters.")

This is in part because, once duly promulgated, there is no difference between a procedural rule that began as a bill in the Legislature and a procedural rule that began with a petition to this Court: both are Wisconsin statutes, and both have the force of law.[17] Under the plain text of Wis. Stat. § 751.12(2), the Court has authority to modify or suspend "all" of these "statutes": the authorizing statute makes no distinction between statutes originating with the Court and statutes originating with the Legislature, so long as they "relat[e] to pleading, practice, and procedure" and the requested change will not "abridge, enlarge, or modify the substantive rights of any litigant."[18]

D. Recent rulemaking decisions confirm the Court's authority to modify procedural statutes, even when doing so would reverse language enacted by the Legislature.

As recently as 2016, the Court has amended and even *repealed* statutes enacted by the Legislature. Here, Petitioner presents three examples of such decisions, which observe the substantive-procedural distinction noted above and in some cases go even further than Petitioner has requested. The lesser relief requested here is well within the Court's authority to grant.

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[17] *Rao v. WMA Securities, Inc.*, 2008 WI 73, ¶35, 310 Wis. 2d 623, 752 N.W.2d 220 ("A rule adopted by this court in accordance with Wis. Stat. § 751.12 is numbered as a statute, is printed in the Wisconsin Statutes, may be amended by both the court and the legislature, has been described by this court as 'a statute promulgated under this court's rule-making authority,' and has the force of law.").

[18] Wis. Stat. § 751.12(1), (2).

℘ Amendment of Wis. Stat. § 906.01 and repeal of Wis. Stats. §§ 885.16, 885.17, and 885.205

In 2016, the Court unanimously granted the Wisconsin Judicial Council's petition (No. 16-01) to repeal Wis. Stats. §§ 885.16 and 885.17 and amend Wis. Stat. § 906.01.[19] Together Wis. Stats. §§ 885.16 and 885.17 were known as the Deadman's Statutes and Wis. Stat. § 906.01, a rule of evidence, recognized them. These statutes generally prohibited "interested witnesses" from testifying about communications or transactions with a person who had since died.[20]

Notably, while Wis. Stat. § 906.01 was a rule of evidence promulgated by the Court in 1973, Wis. Stat. §§ 885.16 and 885.17 began as statutes enacted by the Legislature.[21] The Court nevertheless "repealed" them, concluding that they "are procedural and fall within the court's rule-making authority."[22] In fact, the Court considered and denied a motion for reconsideration specifically arguing that the statutes "were legislatively enacted, substantive, and . . . not within the purview of s. 751.12."[23]

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[19] Wis. Stats. §§ 885.16 and 885.17 began as legislative enactments. Wis. Stat. § 906.01 began as a court rule.

[20] Joe Forward, *After 158 Years, Farewell to the Deadman's Statute in Wisconsin*, STATE BAR OF WISCONSIN (Nov. 2, 2016), available at https://www.wisbar.org/newspublications/insidetrack/pages/article.aspx?volume=8&issue=21&articleid=25177.

[21] 1993 a. 486.

[22] *In the Matter to Amend Wisconsin Statutes §§ 885.16, 885.17, 885.205, and 906.01*, 2017 WI 13, at 2.

[23] *Id.* at 2 n.1.

At the same time, however, the Court declined to further consider the Wisconsin Judicial Council's request to repeal another statute, Wis. Stat. § 885.205, which created a privilege for certain communications between a student and a dean of students or school psychologist. This statute, also created by 1993 Act 486, was arguably substantive because—unlike the evidentiary Deadman's Statutes—it conferred a privilege upon students enrolled at institutions of higher education in Wisconsin. The Court discussed whether this aspect of the proposal would "transcend [its] authority under Wis. Stat. § 751.12" and ultimately "determined that it would not further consider [this] proposed repeal."[24]

∞ Amendment of Wis. Stat. § 802.05 and repeal of Wis. Stat. § 814.025

In March 2005, the Court granted Rules Petition 03-06, amending Wis. Stat. § 802.05 and repealing Wis. Stat. § 814.025. These statutes governed, among other things, remedies for victims of frivolous litigation and attorneys' obligations in making representations to courts. In repealing Wis. Stat. § 814.025, the Court eliminated victims' mandatory right to compensation when harmed by frivolous litigation. In amending Wis. Stat. § 802.05, the Court revamped the rule to emulate Federal Rule of Civil Procedure 11.[25]

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[24] *Id.* at 2.

[25] *In the matter of the repeal of Wis. Stat. § 802.05, and Wis. Stat. § 814.025, and the adoption of Rule 11 of the Federal Rules of Civil Procedure in lieu thereof as amended Wis. Stat. § 802.05*, 2005 WI 38.

Wis. Stat. § 814.025 began as an Assembly bill.[26] And unlike the more recent repeal of the Deadman's Statutes, its repeal did not garner unanimous support. Then-Justice Roggensack dissented from the order, finding the Court had no authority to repeal the statute "because it is a substantive law that was duly created by acts of the legislature."[27] Justice Roggensack found that the majority's decision "violated the explicit prohibition of § 751.12 by removing substantive rights the legislature afforded to the public under § 814.025." The dissent explained why the rights provided to the public under § 814.025 were substantive, citing Black's definition of substantive law:

> The part of the law that creates, defines, and regulates the rights, duties, and powers of parties. . . . "So far as the administration of justice is concerned with the application of remedies to violated rights, we may say that the substantive law defines the remedy and the right, while the law of procedure defines the modes and conditions of the application of the one to the other."[28]

The dissent also showed that § 814.025 was enacted with the objective of creating substantive rights,[29] and went on to explain why the Court lacked constitutional authority "to strike down substantive statutes that it concludes are not good public policy."[30]

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[26] 1977 A.B. 237.
[27] 2005 WI 38, ¶ 7 (Roggensack, J., dissenting). Two other justices joined this dissent.
[28] *Id.* ¶ 11, citing BLACK'S LAW DICTIONARY 1470 (8th ed. 2004) (quoting John Salmond, *Jurisprudence* 476 (Glanville L. Williams ed., 10th ed. 1947)).
[29] *Id.* ¶¶ 12–13.
[30] *Id.* ¶¶ 14–16.

By contrast, the dissent agreed the Court *did* have authority to modify Wis. Stat. § 802.05: "some of the provisions in § 802.05 are procedural and therefore within the constitutional power of the court to revise."[31] However, the dissent disagreed with these changes on policy grounds.[32]

Ultimately, the majority "repealed" Wis. Stat. § 814.025, and described its change to Wis. Stat. § 802.05 as both a "revis[ion]" and a "repeal and recreat[ion]" without distinguishing between the two.[33] As the discussion in the dissent makes clear, these labels were of less concern than the question of whether the majority had annulled a substantive right.[34]

∞ Amendment of Wis. Stat. § 256.15

The Legislature originally enacted this statue.[35] It dictated when courts could transact business. In *State v. Wimberly*, the Court mentioned in a footnote that in 1964, it had amended the statute pursuant to its rule-making power under Wis. Stat. § 251.18, the predecessor to Wis. Stat. § 751.12.[36] The same footnote observed, without apparent concern, that the Legislature had further amended § 256.15 in 1969, citing the *Rules of Court Case*.

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[31] *Id.* ¶ 17 and n. 17, citing the *Rules of Court Case*.
[32] *Id.* ¶¶ 17–20.
[33] *Id.* at 2.
[34] *See id.* ¶ 4 (Prosser, J., dissenting) ("The overriding issue presented in this petition is whether Wis. Stat. § 814.025 embodies 'substantive rights' for litigants, because if it does, this court has no authority to 'repeal' it and replace it with a revised rule.")
[35] *State v. Wimberly*, 55 Wis. 2d 437, 198 N.W.2d 360, 361 n.1 (1972).
[36] *Id.*

This brief reference in *Wimberly* confirms two points. First, the Court's authority to modify procedural statutes originating with the Legislature is neither an outdated relic of the 1930s nor a recent phenomenon, but has been exercised continuously from the *Rules of Court Case* to today. And second, in exercising that authority with respect to a particular statute, this Court has long recognized the Legislature's co-equal authority to modify the same statute, so long as it does not encroach on core judicial power in doing so.

E. Wis. Stat. (Rule) § 802.05(2m) is a procedural rule, so the Court may modify it as requested.

The foregoing confirms a key constraint on the Court's rule-making power under Wis. Stat. § 751.12: it cannot promulgate rules that "abridge, enlarge, or modify the substantive rights of any litigant."[37] Rule Petition 19-16 does not violate that constraint: it concerns no substantive rights of any litigant, but merely asks the Court to amend a procedural rule governing the form of court papers prepared with limited scope legal assistance.

Black's Law defines "procedural law" as: "The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves."[38] Wis. Stat. §802.05(2m) fits squarely within this definition. It requires attorneys to disclose their names

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[37] Wis. Stat. § 751.12(1).
[38] BLACK'S LAW DICTIONARY (11th ed. 2019).

and state bar numbers on pleadings and legal filings they assist in drafting.[39] That is, it simply regulates what identifying information an attorney must provide on a legal filing.

In modifying and repealing the statutes reviewed above, a majority of the Court necessarily concluded that they were procedural. This means it determined that: (1) the Deadman's Statutes and accompanying evidentiary rules; (2) the remedies for victims of frivolous litigation and attorneys' obligations in making representations to courts; and (3) the days the Court could transact business were all procedural rules, not substantive. Otherwise, these amendments would have violated Wis. Stat. § 751.12(1). To the extent some justices found some of these changes *were* substantive and dissented on that basis, they still agreed on the relevant test—just not its outcome.

Here, the procedural character of Wis. Stat. (Rule) § 802.05(2m) is not a close question. The mandatory disclosure obligations under that rule do not provide relief to litigants, nor do they grant any party any right. They do not even govern litigants, only attorneys—whose participation in Wisconsin's courts is primarily subject to this Court's supervision. Therefore, no substantive rights of any litigant are implicated by this requirement and the Court may modify § 802.05(2m) while honoring Wis. Stat. § 751.12.

[39] Wis. Stat. (Rule) § 802.05(2m).

F. Wis. Stat. § 751.12(4) is descriptive, not prescriptive.

In its request for supplemental comments, the Court inquired whether the reference to a legislative delegation of power in the *Rules of Court 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." The answer to that question is no.

As reviewed above, the Court *is* constrained in its authority to amend *substantive* rules, but that constraint derives from § 751.12(1) and the fundamental separation-of-powers principles underlying that provision. By contrast, § 751.12(4) does not constrain the Court's ability to act; it simply describes the effect of the statute on the *Legislature's* coequal authority. The operative subject of § 751.12(4) is "This section." It clarifies that the statute *itself* does not abridge the "right" of the Legislature to act in this sphere. Just so: as the Court has recognized since the *Rules of Court Case*, the Legislature retains that right following the enactment of the statute. So the key question in each case remains whether the matter is (1) so substantive as to be exclusively legislative, (2) so inherent to the courts' role as to be exclusively judicial, or (3) within the procedural realm shared between the two. Within the last category, modification by judicial rule is entirely appropriate.

Moreover, even if § 751.12(4) stated a limitation on the Court's power, Rule Petition 19-16 does not ask this Court to "abridge the right of the legislature" to take further action. To the contrary, Petitioner has recognized the Legislature's shared authority over procedural rules. Petitioner has acknowledged—both in briefing and at the January 17 hearing—that the Legislature would have an equal right to amend § 802.05(2m) again, even if the Court were to do so now. In fact, precisely *because* § 802.05(2m) is procedural and not substantive, both the Legislature and the Court could indefinitely modify this rule without either branch superseding its own power or usurping the other's.

As a simple matter of political inertia, however, the odds of such an outcome are low. Neither the Legislature nor any individual legislator has objected to the Court's proceedings or asked the Court not to act. If the Court grants the Petition, the generally conceded problems with the 2018 amendment will have been resolved, and there is no indication that the Legislature is interested in further tinkering.

But in any case, the mere possibility that the Legislature could act again is inherent in *every* procedural rule petition, and should not prevent this Court from acting now. This Court is intimately familiar with the current consequences of Wis. Stat. (Rule) § 802.05(2m), and—as explained in the following section—it is the body best situated to fix them.

G. The Court is best suited to fix the unintended consequences of the 2018 amendment.

Having full authority to revise Wis. Stat. (Rule) § 802.05(2m) as the Petition requests, the Court is also best situated to appreciate and cleanly resolve the issues presented by the Petition.

This Court has an integral role in regulating the Bar, whose members are officers of the court. In *In re Integration of the Bar*, the Court stated:

> The practice of the law in the broad sense, both in and out of the court, is such a necessary part of and is so inexorably connected with the exercise of the judicial power that this court should continue to exercise its supervisory control of the practice of the law.[40]

The Court reiterated this premise in *Herro, McAndrews & Porter*:

> [T]he primary duty of the courts as the judicial branch of our government is the proper and efficient administration of justice. Members of the legal profession by their admission to the Bar become an important part of that process and this relationship is characterized by the statement that members of the Bar are officers of the court. . . .[41]

As officers of the court, attorneys directly affect courts' abilities to function properly and efficiently. Indeed, the "labor of the courts is lightened, the competency of their personnel and the scholarship of their decisions are increased by the ability and the learning of the Bar."[42]

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[40] *In re Integration of the Bar*, 5 Wis. 2d 618, 622, 93 N.W.2d 601, 603 (1958).

[41] *Herro, McAndrews & Porter, S.C. v. Gerhardt*, 62 Wis. 2d 179, 184, 214 N.W.2d 401, 403–04 (1974).

[42] *In re Integration of the Bar*, 5 Wis. 2d at 622.

Ghostwriting directly benefits Wisconsin's judiciary because it allows courts to shift the initial burden of interpreting *pro se* litigants' arguments from judges to attorneys. It is no secret that self-represented litigants burden court efficiency and case management.[43] As the Court heard at the January 17 hearing, many attorneys would like to alleviate this problem for the courts; they *want* to assist *pro se* parties in drafting pleadings and legal filings in limited scope representations. This desire aligns with all attorneys' obligation of service to the public.[44] But to accomplish this goal and to provide limited scope drafting assistance, attorneys need to be free to do so anonymously, without disclosing their names and bar numbers on such documents. They need to know that their volunteer commitments to self-represented parties are in fact limited in scope—a goal this Court can accomplish by modifying Wis. Stat. (Rule) § 802.05(2m) as requested.

Compared with the Legislature, the Judiciary is more familiar with, and much more directly impacted by, attorneys' reluctance to provide *pro se* litigants limited scope services under the current rule. This Court should not hesitate to amend Wis. Stat. (Rule) § 802.05(2m) and remedy the problems caused by the 2018 amendment.

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[43] Conference of State Court Administrators, Position Paper on Self-Represented Litigation, 1 (Gov't Rel. Office ed. 2000).

[44] *In re Integration of the Bar*, 5 Wis. 2d at 622–23; S.C.R. 20:6.1 (2019).

II. If the Court will not act on the Petition in the near term, it should consider suspending the attorney identification requirement.

The Court has also requested briefing on how it would accomplish procedurally a *suspension* of the attorney identification requirement, an alternative expressly contemplated by Wis. Stat. § 751.12(2). Petitioner has reviewed all of the Court's rules orders available online (1995–2020) and has not identified any instance of the Court exercising its suspension authority.

In proposing this alternative, Petitioner attempted to strike a balance between the harm currently being caused by the 2018 amendment and the possibility that the Court, despite having the power to act on the Petition, wishes to wait before doing so. In that case, Petitioner requests a simple order stating that the attorney identification requirement of § 802.05(2m) is suspended until a date to be determined by the Court. That date may be a date certain (if the Court knows it plans to act at or within a certain time), an event (e.g. until the Legislature amends the rule), or until further notice.

Ultimately, both modification and suspension assume the Court has authority to act. If the Court concludes otherwise, it must deny the Petition. But if the Court agrees it is empowered to act, then it should do so as soon as convenient. Suspension is only necessary to alleviate ongoing harm in the event of delay, which can be avoided by simply granting the Petition.

Dated this 4th day of February, 2020.

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