
**In re amendment of
Wis. Stat. §§ 753.24, 753.26,
757.12, 757.14, and 757.70
relating to the location of court.**

**SUPPORTING MEMORANDUM
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The Director of State Courts respectfully petitions the court to amend Wis. Stat. §§ 753.24 (“Where court to be held”), 753.26 (“Office and records to be kept at county seat”), 757.12 (“Adjournment to another place”), 757.14 (“Sittings, public”), and 757.70 (“Hearings before court commissioners”) to update and clarify the rules related to the location of court.

I. Connection to Rule Petition 20-09

The proposed amendments were previously part of Rule Petition 20-09 (“Videoconferencing”). This court conducted a public hearing on the Videoconferencing petition on April 7, 2021 and ultimately returned the petition to the petitioner.¹ Specifically, the rules the petitioner seeks to amend in this new petition correlate with Sections 2-7 of Rule Petition 20-09. Additional proposed changes have been made since Rule Petition 20-09 was returned to the petitioner.

As such, although this section is submitted as a new rule petition, another public hearing on this petition may not be necessary, and written comments would likely be as effective.

¹ The petitioner requests the court assign a new rules number to this filing, rather than considering it an amended petition 20-09. The petitioner also intends to file an amended rule petition, 20-09A, that will specifically address videoconferencing technology.

II. Supreme Court Superintending Authority

The subject matter of the proposed rule changes falls within the power of the Wisconsin Supreme Court to regulate pleading, practice, and procedure in judicial proceedings in all courts.² The statutes that are the subject of this petition may be amended by court rule or by legislation. The rule that authorizes the court to amend these statutes makes no distinction between statutes that were created by court rule or enacted by the legislature, “All statutes relating to pleading, practice, and procedure may be modified or suspended by rules promulgated under this section.”³ This is a shared authority with the legislature, and the legislature retains authority as well to enact, modify, or repeal statutes or rules relating to court procedures and practice.⁴ Therefore, this court has the power to modify acts of the legislature if those acts relate to “pleading, practice, and procedure.”

The rules at issue here, dealing with where and how court is held, are fundamental to the operation of the court system. The recommended procedural changes bring the rules in line with existing practice and do not abridge, enlarge, or modify the substantive rights of any litigant. They relate directly to the courts’ procedures and practice and are purely administrative in function.

III. Proposed Changes

The proposed changes address considerations related to location of court operations.

Since March of 2020, events, such as a global pandemic and civil unrest, required temporary suspension or relocation of in-person proceedings across Wisconsin, due in part to the temporary closure of some courthouses. The courts’ efforts to respond to these events were sometimes hampered because current rules regarding where court is to be held do not provide

² Wis. Stat. § 751.12(1).

³ Wis. Stat. § 751.12(2).

⁴ Wis. Stat. § 751.12(4).

sufficient flexibility to effectively respond when court needs to be adjourned to another location in an emergency situation or for other compelling reasons. These recent events highlighted the need for providing clear guidance and flexibility in the use of technology and changing courthouse environments.

This petition proposes the court update and clarify rules regarding court location in order to provide clear authority to allow for holding court in alternative locations, including certain alternatives to in-person proceedings with the use of videoconferencing technology. The proposed changes ensure that rights of litigants, victims, other participants, and the public are protected in their ability to participate in and attend court proceedings.

Section 1. Wis. Stat. § 753.24(2m) should be created to establish authority for holding court remotely using videoconferencing technology.

Wis. Stat. s. 753.24(1)-(3) currently sets forth where court is to be conducted. It provides:

753.24 Where court to be held.

- (1) Circuit court shall be held regularly at the county seat.
- (2) Provision may be made, by court rule, for holding court in any city, village or town in the county other than the county seat where the court finds that there are adequate facilities provided and there is sufficient business to warrant holding court.
- (3) If court is held in a city or village located partly in the county from which the judge was elected and partly in another, the judge may hold court, except for trials of criminal offenses, anywhere in that city or village, the same as if it were entirely within the county from which he or she was elected.

The petition proposes the court create a new (2m) that would authorize holding court from remote locations outside of the courthouse, using videoconferencing technology. This proposal is similar to a request made in Section 2 of the Videoconferencing petition, but the language has been modified to explicitly add the requirement that holding court remotely be consistent with constitutional requirements, such as confrontation clause considerations. It would provide:

(2m) Court may be held with the judge and any participants appearing from a remote location using telephone or videoconferencing technology subject to ss. 885.50 to 885.64 and constitutional requirements.

Section 2. Wis. Stat. § 753.26 is outdated and should be repealed.⁵

I recommend the court repeal this provision, which states:

~~**753.26—Office and records to be kept at county seat.** Except in branches Nos. 4, 5, and 7 of the circuit court for Rock County, every circuit judge in this state shall maintain in his or her office, at the county seat of the county in which the judge holds office, all of the books, papers, and records of the court. The office and the books, papers, and records of the circuit judge shall at all reasonable times be open to access and inspection by any person having any business with the books, papers, and records of the court, except as otherwise provided by law. Originals of judgments or orders made under circuit court jurisdiction of branches Nos. 4, 5, and 7 of the Rock County circuit court in Beloit, shall be kept at the county seat.~~

The language in s. 753.26 is outdated and references the judge maintaining the books, papers, and records in his or her physical office. Individuals do not go to a judge's office to examine records. Court records are now maintained electronically and are the responsibility of the clerk of circuit court, not the judge, as provided for in ss. 59.20(3)(a) and 753.30, which also address the location and accessibility of court records. Repealing this section will have no impact on an individual's ability to request and inspect records at the county seat location, where the public can view court records at courthouse computer terminals.

Additionally, this section currently makes an exception for certain branches of Rock County Circuit Court, which is no longer necessary. The referenced court branches were located in Beloit prior to 1999 but no longer exist, and all Rock County branches are now located in Janesville. To avoid redundancy and confusion, s. 753.26 should be repealed.

⁵ The Videoconferencing petition, Section 4, also sought to amend this rule.

Section 3. Wis. Stat. § 757.12 should be amended to update location alternatives when court needs to be adjourned to another location and update how and to whom notice is provided.⁶

Currently, s. 757.12 provides for “adjournment to another place” within the same county.

It states:

Whenever it is deemed unsafe or inexpedient, by reason of war, pestilence or other public calamity, to hold any court at the time and place appointed therefor the justices or judges of the court may appoint any other place within the same county and any other time for holding court. All proceedings in the court may be continued at adjourned times and places and be of the same force and effect as if the court had continued its sessions at the place it was held before the adjournment. Every such appointment shall be made by an order in writing, signed by the justices or judges making the appointment, and shall be published as a class 1 notice, under ch. 985, or in such other manner as is required in the order.

The language in 757.12 should be updated to expand the options for holding court in another Wisconsin county, if necessary. The proposed amendment also reflects changes in how individuals obtain information. This proposal has also been modified since it was submitted as part of the Videoconferencing petition. The proposed amendments now specify that the alternative location must be in Wisconsin, and adds the Chief Justice as a recipient of notice of such a change.⁷

It may not always be possible to move court to a location within the same county. For example, a county may not have courtrooms or other buildings that are sufficiently large enough to allow for social distancing. Or, a significant repair or remodeling project may merit a temporary relocation. Allowing a court proceeding to take place in another Wisconsin county, where a

⁶ The Videoconferencing petition, Section 5, also sought to amend this rule.

⁷ This section has been further revised from how it appeared in the Videoconferencing petition to remove the proposed requirement for Chief Judge approval when court is moved to an alternative location. Based on subsequent conversations with various stakeholders, the consensus was that the decision to move court should remain with the local judge. This is also consistent with the rule as currently written, which has never required Chief Judge approval. Under the proposed amendments to this section, the Chief Judge would be notified of the location change.

suitable facility may be found, means that there will be fewer interruptions and delays in court proceedings, when events disrupt the normal course of business. Additionally, with respect to notice, newspapers, to which class 1 notices apply,⁸ are no longer the public's primary source for receiving information, and the proposed amendments to the notice requirement contemplate providing notice in locations where individuals are most likely to see this information, namely, websites.

Additionally, the language of this section should be amended to provide that bench warrants will not be issued for failure to appear unless it can be established that the party received notice of order that court was adjourned to another location.⁹

757.12 Adjournment to another place location. Whenever it is deemed unsafe or inexpedient, by reason of war, pestilence, public calamity, or other compelling factors limiting or preventing access to the courthouse, to hold any court at the time and place appointed therefor the justices or judges of the court may ~~appoint any other place within the same county and any other time for holding court.~~ order court to be held at an alternative location in Wisconsin, including in another county, on a temporary basis. Every such order shall be made in writing. Notice of such orders shall be provided by email to the Chief Justice, the Chief Judge of the judicial district, the Director of State Courts, the State Bar of Wisconsin, and the local bar association. Any such orders shall be placed on the Wisconsin State Courts website, the county website, and the door of the courthouse, if practicable. All court proceedings moved to another location shall have the same force and effect as if held at the original location. Bench warrants shall not be issued for failure to appear without a finding that the party received notice of the date, time and location of the proceeding. All proceedings in the court may be continued at adjourned times and places and be of the same force and effect as if the court had continued its sessions at the place it was held before the adjournment. Every such appointment shall be made by an order in writing, signed by the justices or judges making the appointment, and shall be published as a class 1 notice, under ch. 985, or in such other manner as is required in the order.

⁸ Class 1 notices require one insertion under Wis. Stat. § 985.07.

⁹ The Zoom Task Force determined this addition would afford protection to defendants who do not receive notice of the change in location of court. This does not affect the standard practice for nonappearance.

Section 4. Wis. Stat. § 757.14 should be amended to update the language related to public sittings and clarify that the court may use videoconferencing technology to provide public access to court proceedings.¹⁰

The petition would update this section to allow an option for using videoconferencing technology to provide public access to the proceedings as an alternative to attending court in person. Victims who wish to observe the proceeding can also use this technology to access hearings in a safer and less traumatizing way.¹¹

The proposed amendment adds language to emphasize that this section applies when telephone or videoconferencing technology is used to conduct the proceeding, and that public access is to be provided in real time. When videoconferencing technology is used, the proceeding can be livestreamed to provide public access, or the participants appearing from a remote location using videoconferencing technology can be projected on a screen in the courtroom so the proceeding can be viewed by anyone attending the proceeding in-person.

The proposed amendment also updates and simplifies the current language. As amended it would provide:

757.14 Sittings, public. The sittings of every court shall be public and every citizen may freely attend the same, including proceedings held by telephone or videoconferencing technology, except if otherwise expressly provided by law ~~on the examination of persons charged with crime; provided, that when in any court a cause of a scandalous or obscene nature is on trial.~~ If the content of the proceeding is deemed graphic or obscene, the presiding judge or justice may exclude from the courtroom where the court is sitting all minors not necessarily present as parties or witnesses. The court may utilize electronic means to allow the public the ability to hear and see, in real time, all proceedings in a manner as similar as practicable to being present in the courtroom.

¹⁰ The Videoconferencing petition, Section 6, also sought to amend this rule.

¹¹ This rule is not intended to address direct victim participation in a proceeding. The amended 20-09A Videoconferencing petition will include additional provisions regarding direct victim participation in the proceedings.

Section 5. Wis. Stat. § 757.70(2) should be amended for consistency.¹²

In accordance with the proposed changes in s. 753.24, the references to location in s. 757.70 should also be updated and should also reference s. 753.24 for consistency.

757.70 Hearings before court commissioners.

[(1)]

(2) All hearings before a circuit or supplemental court commissioner shall be held in ~~the county courthouse or other court facilities provided by law~~ accordance with s. 753.24. This provision does not apply to nontestimonial proceedings, supplementary hearings on the present financial status of a debtor under s. 757.675 (2) (h) or depositions taken before a circuit or supplemental court commissioner.

IV. Conclusion

The proposed rule changes will help circuit court judges respond effectively in emergency situations, as well as increase flexibility for holding court proceedings in the face of changing circumstances and advancing technologies. For the reasons set forth in this Memorandum, the Director of State Courts requests that the Supreme Court grant this petition with a proposed effective date of January 1, 2022.

Respectfully submitted this ____ day of August, 2021.

Hon. Randy R. Koschnick
Director of State Courts

¹² The Videoconferencing petition, Section 7, also sought to amend this rule.