

**In re amendment of Supreme Court
Rule Chapter 20 and
Wisconsin Statute Chapters 800, 801, 802, and 809
relating to Limited Scope Representation**

PETITION 13-__

The Director of State Courts hereby petitions the court to amend Rules of Professional Conduct for Attorneys, Rules of Civil Procedure, and Rules of Appellate Procedure to support and expand limited scope representation. This rule petition is submitted on behalf of the Planning and Policy Advisory Committee (PPAC) of the Wisconsin Supreme Court, which is the court's advisory committee on planning initiatives, the administrative structure of the court system and the expeditious handling of judicial matters. This rule petition is made pursuant to the supreme court's rulemaking authority under Wis. Stat. § 751.12 and its administrative authority over all courts conferred by Article VII, Section 3 of the Wisconsin Constitution.

This rule petition has two parts. Sections 1-10 and sections 11-14 include amendments to Wisconsin Supreme Court Rules and Wisconsin Statutes, respectively, which set forth procedures on how a lawyer can provide limited legal services. Sections 15-19 propose revisions to rules and statutes that recognize and allow a lawyer to assist in preparing documents to be signed and filed with a court by a pro se party without disclosing the lawyer's identity but requiring disclosure of the lawyer's involvement.

Supreme Court Rule Amendments

SECTION 1. SCR 20:1.2 (c) of the Supreme Court Rules is amended to read:

SCR 20:1.2 (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. The client's informed consent must be in writing except as set forth in sub. (1).

(1) The client's informed consent need not be given in writing if:

- a. the representation of the client consists solely of telephone consultation;
- b. the representation is provided by a lawyer employed by or participating in a program sponsored by a nonprofit organization, a bar association, an accredited law school, or a court and the lawyer's representation consists solely of providing information and advice or the preparation of court-approved legal forms;
- c. the court appoints the lawyer for a limited purpose that is set forth in the appointment order; or
- d. the representation is provided by the state public defender pursuant to Wis. Stat. Ch. 977, including representation provided by a private attorney pursuant to an appointment by the state public defender.

(2) If the client gives informed consent in writing signed by the client, there shall be a presumption that:

- (i) the representation is limited to the lawyer and the services described in the writing, and
- (ii) the lawyer does not represent the client generally or in matters other than those identified in the writing.

SECTION 2. Wisconsin Committee Comment to Supreme Court Rule 20:1.2 (c) is created to read:

With respect to subparagraph (c), a lawyer providing limited scope representation in an action before a court should consult Wis. Stat. § 802.045 regarding notice and withdrawal requirements.

SECTION 3. Wisconsin Committee Comment to Supreme Court Rule 20:1.2 (c) is created to read:

With respect to subparagraph (c), a lawyer providing limited scope representation in an action before a court should consult Supreme Court Rule 20:1.5 (b) regarding fees and expenses.

SECTION 4. Wisconsin Committee Comment to Supreme Court Rule 20:1.1, Competence, is created to read:

When a lawyer is providing limited scope representation, competence means the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the limited scope representation.

SECTION 5. Wisconsin Committee Comment to Supreme Court Rule 20:1.16, Declining or terminating representation, is created to read:

With respect to subparagraph (c), a lawyer providing limited scope representation in a matter before a court should consult Wis. Stat. § 802.045 regarding notice and termination requirements.

SECTION 6. Comment to Supreme Court Rule 11.02, Appearance by attorney, is created to read:

Lawyers should consult Wis. Stat. § 802.045 for guidance in limited scope representation situations.

SECTION 7. SCR 20:4.2, Communication with person represented by counsel, of the Supreme Court Rules is renumbered 20:4.2 (a).

SECTION 8. SCR 20:4.2 (b), Communication with person represented by counsel, of the Supreme Court Rules is created to read:

SCR 20:4.2 (b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with Rule 20:1.2(c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

SECTION 9. SCR 20:4.3, Dealing with unrepresented person, of the Supreme Court Rules is renumbered 20:4.3 (a).

SECTION 10. SCR 20:4.3 (b), Dealing with unrepresented person, of the Supreme Court Rules is created to read:

SCR 20:4.3 (b) An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with Rule 20:1.2 (c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.

Statutory Amendments

SECTION 11. 802.045 of the Wisconsin Statutes is created to read:

802.045. Limited Scope Representation Permitted – Process.

(1) An attorney may provide limited scope representation to a person involved in a court action.

(2) NOTICE OF LIMITED APPEARANCE. An attorney's role in an action may be limited to one or more individual proceedings or issues in an action if specifically so stated in a notice of limited appearance filed and served upon the parties prior to or simultaneous with the proceeding. Providing limited scope representation of a person under this section does not constitute a general appearance by the attorney for purposes of s. 801.14. The notice of limited appearance shall contain the following information:

- (a) The name and the party designation of the client.
- (b) The specific proceeding(s) or issue(s) within the scope of the limited representation.
- (c) A statement that the attorney will file a notice of termination upon completion of services.
- (d) A statement that the attorney providing limited scope representation shall be served with all matters while providing limited scope representation.
- (e) Contact information for the client including current address and phone number.

(3) SERVICE. Service shall be made under s. 801.14(2m).

(4) TERMINATION OF LIMITED APPEARANCE. At the conclusion of the representation for which a notice of limited appearance has been filed, the attorney's role terminates without further order of the court upon the attorney filing with the court, and serving upon the parties, a

notice of the termination of limited appearance. Any such notice of termination of limited appearance shall contain the following information:

- (a) A statement that the attorney has completed all services within the scope of the Notice of Limited Appearance.
- (b) A statement that the attorney has completed all acts ordered by the court.
- (c) A statement that the attorney has served the notice of termination of limited appearance on all parties, including the client.
- (d) Contact information for the client including current address and phone number.

(5) FORMS. The director of state courts shall provide forms for use in filing notices required under this section to the clerk of circuit court in each county.

SECTION 12. 801.14 (2m), Service and Filing of Pleadings and Other Papers, of the Wisconsin Statutes is created to read:

801.14 (2m) When an attorney has filed a limited appearance under s. 802.045(2) on behalf of an otherwise self-represented person, anything required to be served under sub. (1) shall be served upon both the otherwise self-represented person who is receiving the limited scope representation and to the limited scope representation attorney. After the limited scope representation attorney files that attorney's notice of termination form, as provided in s. 802.045(4), no further service upon that attorney is required.

SECTION 13. 809.80 (2) (a), Filing and service of papers, of the Wisconsin Statutes is amended to read:

809.80 (2) (a) A person shall serve and file a copy of any paper required or authorized under these rules to be filed in a trial or appellate court as provided in s. 801.14 (1), (2), (2m) and (4).

SECTION 14. 800.035 **(1m)** is created to read:

800.035 **(1m)** An attorney may provide limited scope representation to a person involved in a municipal court action as provided in s. 802.045 and 802.05.

Document Preparation Provisions (Ghostwriting)

SECTION 15. SCR 20:1.2 (cm) of the Supreme Court Rules is created to read:

SCR 20:1.2 (cm) A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that "This document was prepared with the assistance of a lawyer." A lawyer shall advise the client to whom the lawyer provides assistance in preparing pleadings, briefs, or other documents for filing with the court that the pleading, brief, or other document must contain a statement that it was prepared with the assistance of a lawyer.

SECTION 16. Wisconsin Committee Comment to Wisconsin Supreme Court Rule 20:1.2 (cm) is created to read:

A lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are "prepared with the assistance of a lawyer." Such actions by the lawyer shall not be deemed an appearance by the lawyer in the case.

SECTION 17. SCR 20:3.1 (am), Meritorious claims and contentions, of the Supreme Court Rules is created to read:

SCR 20:3.1 (am) A lawyer providing limited scope representation pursuant to SCR 20:1.2 (c) may rely on the otherwise self-represented person's representation of facts, unless the lawyer has reason to believe that such representations are false, or materially insufficient, in which instance the lawyer shall make an independent reasonable inquiry into the facts.

SECTION 18. 802.05 (2m) of the Wisconsin Statutes is created to read:

802.05 (2m) ADDITIONAL REPRESENTATIONS TO COURT AS TO PREPARATION OF PLEADINGS OR OTHER DOCUMENTS.

An attorney may draft or assist in drafting a pleading, motion or document filed by an otherwise self-represented person. The attorney is not required to sign the pleading, motion or

document. Any such document must contain a statement immediately adjacent to the person's signature that "This document was prepared with the assistance of a lawyer." The attorney providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false, or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

SECTION 19. 809.19 (1) (h) of the Wisconsin Statutes is amended to read:

809.19 (1) (h) The signature of the attorney who files the brief, or, if the party who files the brief is not represented by an attorney, the signature of the party. If the brief was prepared with the drafting assistance of an attorney under s. 802.05(2m), the brief must contain a statement that "This document was prepared with the assistance of a lawyer."

SECTION 20. Proposed effective date of January 1, 2015.

Respectfully submitted this ____ day of July, 2013.

A. John Voelker
Director of State Courts