

SUPREME COURT OF WISCONSIN

No. 13-16

**In the matter of the Petition to Amend
Wisconsin Statute § 887.24.**

FILED

DRAFT

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On November 15, 2013, Attorney April M. Southwick filed a rule petition on behalf of the Wisconsin Judicial Council (Judicial Council) requesting that the court repeal Wis. Stat. § 887.24 and replace it with the Uniform Interstate Depositions and Discovery Act (UIDDA), as amended to comport with Wisconsin law.

The court discussed the matter at an open rules conference on June 25, 2014, and voted to schedule a public hearing. On August 7, 2014, letters were sent to interested parties, seeking input, and to the petitioner, seeking responses to certain questions. The court received a written response from the Judicial Council's Evidence & Civil Procedure Committee (Committee) dated September 5, 2014. The court also received a written response from the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) dated September 8, 2014, providing additional information about the UIDDA, and from the State Bar of Wisconsin dated September 22, 2014, indicating that the State Bar Board of Governors had voted unanimously to support the petition.

The court conducted a public hearing on September 29, 2014. Attorney Thomas Schreiner presented the petition to the court on behalf of the Judicial Council. Attorney Southwick also addressed the court. As the statements at the public hearing and the written comments indicate, the UIDDA is a uniform act, patterned after Rule 45 of the Federal Rules of Civil Procedure, that allows out-of-state litigants to obtain third-party discovery in the enacting state. The UIDDA was approved and recommended for enactment in all states by the Uniform Law Commission at its annual conference in 2007.

The Judicial Council asked its Committee to study the UIDDA for possible recommendation for adoption in Wisconsin. The Committee reviewed variations to each section of the UIDDA that have been adopted in other jurisdictions and debated which alternatives would work best for Wisconsin before crafting the petition filed with the court.

At the open administrative rules conference on December 5, 2014, the court discussed various aspects of the proposal, including: whether to include federally recognized Indian tribes; if proposed Wis. Stat. § 887.24(3)(c), permitting issuance of a subpoena by a Wisconsin attorney, should specify that the subpoena must contain all the elements applicable to a subpoena issued by a clerk of circuit court; if proposed language regarding whether issuance of a subpoena constitutes a court appearance is clear, as drafted; if a clerk may maintain any record of subpoenas issued based on the drafting of proposed Wis. Stat. § 887.24(4); if the duties imposed on clerks of court are ministerial; what it means for a clerk to "verify" the

terms of a foreign subpoena; whether to include a reference to statutes as well as rules in proposed Wis. Stat. § 887.24(5); procedures for imposing fees and expenses; whether a subpoena should be filed where discovery will occur or where the witness resides; and whether adoption of the proposed rule would require amendments to Wisconsin Form GR-126 (Subpoena and Certificate of Appearance). Ultimately, the court voted 6:1 (Chief Justice Abrahamson dissenting) to return the petition to the Judicial Council for editing and refinements reflecting the court's discussions.

IT IS ORDERED that the petition is returned to the Wisconsin Judicial Council for further proceedings consistent with this order.

IT IS FURTHER ORDERED that the court may hold further proceedings in this matter following its receipt of an amended rules petition from the Wisconsin Judicial Council.

Dated at Madison, Wisconsin, this ____ day of February, 2015.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

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