

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 13-10

In the matter of petition to amend Supreme Court Rule Chapter 20 and Wis. Stat. Chapters 800, 801, 802, and 809 relating to Limited Scope Representation.

FILED**JUN 27, 2014**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On July 16, 2013, the Director of State Courts filed this petition on behalf of the Planning and Policy Advisory Committee (PPAC) to amend and create rules and statutes to support and expand "limited scope representation." This petition reflects the culmination of substantial work on the part of PPAC, Theresa Owens, then-Executive Assistant to the Chief Justice, and the Director's office.

The court discussed the matter in September 2013 and decided to solicit public comment and hold a public hearing. The court received a number of written comments on the petition. The written comments were largely favorable and included letters from the Wisconsin Access to Justice Commission (WAJC), Attorney James Gramling, Jr., Chair of the Delivery of Legal Services Committee of the WAJC, the State Bar of Wisconsin (State Bar), the Wisconsin State Public Defenders Office, the 10th Judicial District's Self-Represented Litigants

Committee, Attorney Michael Gonring, and Wisconsin Court of Appeals Judge Gary Sherman. Thomas G. Cannon, Executive Director of the Legal Aid Society of Milwaukee, filed a letter received March 19, 2014, opposing the petition as it applied to "poorly educated . . . financially unsophisticated" clients and urging the court to adopt pending rule petition 13-15, which would, inter alia, create a court-funded appointment of counsel pilot project for indigents in one or more selected categories of civil cases involving basic human needs. The Business Law Section of the State Bar expressed concern about the petition adversely affecting the manner in which lawyers routinely render legal advice to established clients.

Shortly before the public hearing, the court was advised, in writing, that the petitioner and the Business Law Section had crafted an amendment to the petition that resolved the Business Law Section's concerns. The petitioner also revised one of the proposed comments to Supreme Court Rule (SCR) 20:1.2(c).

On March 21, 2014, the court held a public hearing on the petition. The Honorable John P. Anderson presented the petition. The court also heard testimony from the State Bar Ethics Counsel, Attorney Tim Pierce, the Honorable Michael J. Dwyer, Attorney Diane Diel, Gregg Moore, then-President of the WAJC, Attorney James Gramling, Jr., and Carlo Esqueda, Clerk of the Dane County Circuit Court. All spoke in favor of the amendment as a vehicle to improve the public's access to legal representation.

The court discussed the petition, as amended, in open administrative rules conference on April 4, 2014, and voted

unanimously to adopt the petition, as drafted, with the addition of the amendment reflecting the agreement of the petitioner and the Business Law Section, the revised comment to SCR 20:1.2(c), and certain changes recommended by the Legislative Reference Bureau to which the petitioner agreed.

IT IS ORDERED that the Supreme Court Rules and the Wisconsin Statutes are amended as follows:

SECTION 1. 800.035 (1m) of the statutes 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 ss. 802.045 and 802.05.

SECTION 2. 801.14 (2m) of the 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 the attorney who filed the limited appearance under s. 802.045 (2). After the attorney files a notice of termination under s. 802.045 (4), no further service upon that attorney is required.

SECTION 3. 802.045 of the statutes is created to read:

802.045 LIMITED SCOPE REPRESENTATION PERMITTED - PROCESS. (1) AUTHORIZED. 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.

(2) NOTICE OF LIMITED APPEARANCE. The notice of limited appearance shall contain the following information:

(a) The name and the party designation of the client.

(b) The specific proceedings or issues 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 documents 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. A notice of termination of limited appearance shall contain all of 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 the clerk of circuit court in each county forms for use in filing notices required under this section.

SECTION 4. 802.05 (2m) of the 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 5. 809.19 (1) (h) of the 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 that 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 6. 809.80 (2) (a) of the 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 7. Wisconsin Committee Comment to Supreme Court Rule 11.02, Appearance by attorney, is created to read:

Lawyers should consult s. 802.045, stats., for guidance in limited scope representation situations.

SECTION 8. 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 9. 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).

SECTION 10. SCR 20:1.2 (c) (1) and (2) of the Supreme Court Rules are created to read:

SCR 20:1.2 **(c)** (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;

d. the representation is provided by the state public defender pursuant to Ch. 977, stats., including representation provided by a private attorney pursuant to an appointment by the state public defender; or

e. the representation is provided to an existing client pursuant to an existing lawyer-client relationship.

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

a. the representation is limited to the lawyer and the services described in the writing, and

b. the lawyer does not represent the client generally or in matters other than those identified in the writing.

SECTION 11. 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 s. 802.045, stats., regarding notice and withdrawal requirements.

SECTION 12. Wisconsin Committee Comment to Supreme Court Rule 20:1.2 (c) is created to read:

The requirements of subparagraph (c) that require the client's informed consent, in writing, to the limited scope representation do not supplant or replace the requirements of SCR 20:1.5 (b).

SECTION 13. 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 14. Wisconsin Committee Comment to 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 15. 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 s 802.045, stats., regarding notice and termination requirements.

SECTION 16. SCR 20:3.1 (am) 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 17. SCR 20:4.2 of the Supreme Court Rules is renumbered 20:4.2 (a).

SECTION 18. SCR 20:4.2 (b) 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 SCR 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 19. SCR 20:4.3 of the Supreme Court Rules is renumbered 20:4.3 (a).

SECTION 20. SCR 20:4.3 (b) 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 SCR 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.

IT IS FURTHER ORDERED that the Comments to SCRs 11.02, 20:1.1, 20:1.2(c), 20:1.2(cm), and 20:1.16 are not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

IT IS FURTHER ORDERED that that the amendments adopted pursuant to this order shall be effective as of January 1, 2015, and shall apply to proceedings commenced after the effective date of this rule and, insofar as is just and practicable, proceedings pending on the effective date.

IT IS FURTHER ORDERED that notice of these amendments of SCR Chapter 20 and Wis. Stat. Chapters 800, 801, 802, and 809 be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 27th day of June, 2014.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

