

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. 15-05

**In the matter of the Petition to
Amend Supreme Court Rule Chapter 31
and Chapter 10.03**

FILED

JUL 21, 2016

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On October 7, 2015, the State Bar of Wisconsin (State Bar), by its President, Ralph M. Cagle, filed this rule petition. The petition seeks two discrete changes to the supreme court rules, both intended to increase incentives and opportunities for Wisconsin lawyers to provide voluntary pro bono service. Increasing pro bono participation is one of the State Bar's strategic priorities and is consistent with the court's efforts to address the unmet legal needs of low income Wisconsin residents.

First, the petition asks the court to permit lawyers to obtain a limited amount of continuing legal education (CLE) credit for certain types of pro bono service, namely service provided at a reduced fee or without fee to persons of limited means through a qualified pro bono program or pursuant to a court appointment. This proposal requires changes to various sections of Supreme Court Rule (SCR)

Chapter 31, governing CLE. Second, the petition asks the court to permit registered in-house counsel to engage in pro bono work generally, consistent with the broader description of pro bono service set forth in SCR 20:6.1 (Pro bono publico). This proposal requires changes to SCR 10.03(4)(f).

The court discussed the petition at open rules conference on December 4, 2015, and voted to schedule a public hearing. On January 27, 2016 an order issued, scheduling the public hearing for April 13, 2016, and on the same day, letters were sent to interested persons, seeking input.

Written comments were received from Amar Sarwel, Vice President and Chief Legal Strategist, Association of Corporate Counsel; Douglas M. Hagerman, Senior Vice President, General Counsel, and Secretary of Rockwell Automation; Attorney Mark A. Cameli, Chair, Pro Bono Committee, Boerner, & Van Deuren, S.C.; David A. Pifer, Executive Director and Maggie Niebler-Brown, Coordinator, Volunteer Lawyers Project, Legal Action of Wisconsin; and Karl Erickson, Executive Director, ELCA Outreach Center. All favored the proposed changes to the Supreme Court Rules. The Board of Bar Examiners (BBE) also submitted written comment, raising concerns about (1) the cost of making changes to the BBE's Continuing Legal Education reporting database; (2) verification of the attorney's completion of pro bono hours; and (3) the effect the changes may have on reactivations, readmissions, or reinstatements. The BBE does not support the

proposed change to SCR 10.03(4)(f), expanding the scope of practice for registered in-house counsel.

The court conducted a public hearing on April 13, 2016. State Bar President Ralph M. Cagle presented the petition to the court. Michael Anderson, Senior Vice President & Chief Legal Officer CUNA Mutual Group; Jeff Brown, Pro Bono Program Manager, State Bar of Wisconsin; James A. Gramling, Jr., President, Wisconsin Access to Justice Commission; David A. Pifer, Executive Director, Legal Action of Wisconsin; Eve Runyon, President and Chief Executive Officer, Pro Bono Institute; and Atheneé Lucas, ACC-WI Past President and Staff Counsel Fiserv, Inc., all appeared and testified in support of the petition.

At its open rules conference following the hearing the court discussed the proposal. Justice Michael J. Gableman stated that he would increase the amount of CLE credit available for pro bono service. The court discussed the administrative impact of the rule changes on the BBE and the need for the BBE to adopt guidelines to assist the BBE in evaluating anticipated requests under proposed SCR 31.01(12)(d). The court also noted that the Circuit Court Automation Program (CCAP) will need to undertake and complete necessary programming changes associated with this rule change.

Following additional discussion, the court voted, 5-2, to adopt the petition, with the inclusion of language clarifying that CLE credit for pro bono service is not available to lawyers seeking readmission, reinstatement, or reactivation. Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley each indicated she supports

the petition but disagreed with certain wording in the proposed rule changes. Therefore,

IT IS ORDERED that:

SECTION 1. Supreme Court Rule 31.01(11) and (12) are created to read:

(11) "Pro Bono legal services" means direct legal services provided without fee or expectation of fee to persons of limited means through a qualified pro bono program or pursuant to an appointment by a state or federal court.

(12) "Qualified pro bono program" means:

(a) a pro bono program operated by a nonprofit legal services organization that receives funding from the Wisconsin Trust Account Foundation;

(b) a pro bono program operated by a Wisconsin law school;

(c) a pro bono program existing on the date that this rule is adopted that is operated by a Wisconsin bar association; or

(d) a program approved by the board as a qualified pro bono program.

SECTION 2. Supreme Court Rule 31.05(7) is created to read:

(7) One (1.0) hour of Wisconsin continuing legal education credit may be claimed for every five (5.0) hours of pro bono legal services as defined in this chapter to satisfy the requirements of SCR 31.02, up to a maximum of six (6.0) credits per reporting period. Pro bono legal services credit may not be used for reinstatement, readmission, or reactivation.

SECTION 3. Supreme Court Rule 31.07(2) (a) is amended to read:

(a) The primary objective of any CLE activity shall be either to increase the attendee's professional competence as a lawyer or to fulfill their professional responsibility to provide pro bono legal services.

SECTION 4. Supreme Court Rule 31.08(4) is created to read:

(4) Any person desiring approval of pro bono legal services hours for CLE credit under SCR 31.02 shall submit all information required by the board.

SECTION 5. Supreme Court Rule 10.03(4)(f) is amended to read:

Counsel not admitted to the practice of law in this jurisdiction but admitted in any other U.S. jurisdiction or foreign jurisdiction, who is employed as a lawyer in Wisconsin on a continuing basis and employed exclusively by a corporation, association, or other nongovernmental entity, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within 60 days after the commencement of employment as a lawyer or if currently so employed then within 90 days of the effective date of this rule, by submitting to the Board of Bar Examiners the following:

1. A completed application in the form set forth in Appendix B to this rule;

2. A nonrefundable fee of two hundred and fifty dollars (\$250) to the Board of Bar Examiners;

3. Documents proving admission to practice law in the primary jurisdiction in which counsel is admitted to practice law; and

4. An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed.

A lawyer registered under this subsection may provide pro bono legal services without fee or expectation of fee as provided in SCR 20:6.1.

SECTION 6. The Wisconsin Comment to Supreme Court Rule 10.03(4)(f) is amended to read:

A registered in-house lawyer is authorized to provide legal services to the entity, client, or its organizational affiliates, including entities that control, are controlled by, or are under the common control with the employer, and for employees, officers, and directors of such entities, but only on matters directly related to their work for the entity and only to the extent consistent with SCR 20:1.7. ~~A lawyer registered under this section may provide pro bono legal services to qualified clients of a legal service program.~~ Counsel who provide legal services in this jurisdiction under SCR 20:5.5(d)(1) that desire to appear, either in person, by signing pleadings, or by being designated as counsel in actions filed in courts, administrative agencies, or other tribunals in this state, must file a separate motion for pro hac vice admission.

IT IS FURTHER ORDERED that the effective date of this order is January 1, 2017.

IT IS FURTHER ORDERED that within 60 days of the date of this order, the State Bar of Wisconsin shall provide the Board of Bar Examiners with a list of existing pro bono programs operated by a

Wisconsin bar association as of the date of this order. See SCR 31.01(12)(c).

IT IS FURTHER ORDERED that prior to the effective date of this order the Board of Bar Examiners is directed to adopt guidelines by which it will evaluate requests for approval as a qualified pro bono program under SCR 31.01(12)(d).

IT IS FURTHER ORDERED that prior to the effective date of this order, the Board of Bar Examiners shall evaluate whether additional rules or forms are necessary to implement this order and shall ensure that the rules of the Board of Bar Examiners, SCR ch. 40 Appendix, are consistent with this order.

IT IS FURTHER ORDERED that no later than 60 prior to the effective date of this order, the Circuit Court Automation Program (CCAP) shall complete necessary programming changes to permit electronic pro bono CLE reporting consistent with the terms of this order.

IT IS FURTHER ORDERED that notice of the above amendments 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 21st day of July, 2016.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, J. (*concurring*).
Wisconsinites with legal issues and limited means need the assistance of counsel. I therefore strongly support this rule, even though no empirical evidence demonstrates that more pro bono services will, in fact, be available if lawyers receive CLE (continuing legal education) credit for providing pro bono services.

¶2 I hope that the Board of Bar Examiners (and others) will monitor the effect of this rule (to the extent possible) to determine (1) whether the public is better served as a result of this rule; and (2) whether Wisconsin providers of continuing legal education programs suffer decreased attendance at programs and decreased revenues.

¶3 I write separately to make two points.

¶4 First, I write about the definition of "pro bono legal services" in SCR 31.01(11). The definition is very narrow. The narrow definition fits the purposes of SCR 31.01(11).

¶5 The phrase "pro bono legal services" is also used (but left undefined) in SCR 10.03(4)(f).

¶6 Two provisions in the Supreme Court Rules using the same "technical" language adopted at the same time might well be interpreted in the same way. In other words, the definition in SCR 31.01(11) could be read into SCR 10.03(4)(f) under the rules of interpretation. See Wis. Stat. § 990.01(1).

¶7 The narrow definition of "pro bono legal services" set forth in SCR 31.01(11) is not suitable for use in defining the phrase in SCR 10.03(4)(f). SCR 10.03(4)(f) is intended to

authorize "registered in-house counsel" to perform "pro bono public legal services" as broadly described in SCR 20:6.1. SCR 10.03(4)(f) is not connected with CLE credits.

¶8 Using the same phrase, "pro bono legal services," in both sections creates an opportunity for confusion that easily could have been avoided by using a different phrase in SCR 10.03(4)(f), defining the phrase differently in SCR 10.03(4)(f), or inserting an explanatory comment about not interpreting SCR 10.03(4)(f) in light of SCR 31.01(11).

¶9 Second, I have a more serious concern. The court imposes in this order an additional task on the Consolidated Court Automation Programs (CCAP). The rule directs CCAP to complete, on or before November 2, 2016 (i.e., 60 days before January 1, 2017), the necessary programming changes to allow electronic pro bono CLE reporting to the Board of Bar Examiners consistent with the terms of the order.

¶10 In response to the rule petition, the Director of the Board of Bar Examiners filed a letter explaining that CCAP has not yet completed a project for the Board (pending for a substantial time) enabling electronic filing of certain documents with the Board. The Board believes that it should not be directed to undertake another project that relies on CCAP's assistance before its pending project with CCAP is completed.

¶11 Today's order imposes new duties on CCAP at the same time that the court has adopted mandatory circuit court e-filing, which imposes significant new duties on CCAP. Mandatory e-filing has delayed 17 pending CCAP projects. See the final

order on Rule Petition 14-03 relating to mandatory e-filing and my separate writing, available at <https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=166309>.

¶12 The court seems to be issuing orders at cross purposes.

¶13 The court keeps increasing the tasks to be performed by CCAP in the near future without being kept sufficiently apprised of CCAP's hiring needs and the revenues and costs associated with implementing mandatory e-filing or CCAP's other tasks—old and new. At the same time, the program revenue upon which CCAP depends is falling precipitously. The alarm is sounding loud and clear, but the court is neither listening to it nor acting on it.

¶14 I write separately to support pro bono legal services and the petition. I also write to express two specific concerns: one a technical drafting issue, the other an alert about the functioning of the judicial system.

