

SUPREME COURT OF WISCONSIN

No. 12-01

**In the matter of review of Report of the
Wisconsin Supreme Court Advisory Committee on
Rule Procedures**

FILED

JUL 28, 2016

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

In June 2010, the court voted unanimously to convene an advisory committee to consider its own administrative rulemaking procedures. The Wisconsin Supreme Court Advisory Committee on Rule Procedures (Committee) was established. The members of the Committee were: Chief Justice Shirley S. Abrahamson; Justice David T. Prosser; Justice Patience Drake Roggensack; Attorney Dean Dietrich; Attorney Beth Hanan, Chair of the Wisconsin Judicial Council; Attorney Russ Whitesel, Legislative Council; Attorney Lisa Roys, State Bar Public Affairs Director; Attorney Adam Korbitz, State Bar Government Relations Coordinator; and Theresa Owens, Executive Assistant to the Chief Justice, as reporter.¹ In May 2011, the Committee submitted a report to the court that summarized three structures that the court might consider for its rulemaking function. The Committee incorporated a procedural flowchart in its report and recommended

¹ This order will refer to the Justices and to Committee members by the titles in effect at the time of the actions described. Effective May 1, 2015, Patience Drake Roggensack succeeded Shirley S. Abrahamson as Chief Justice of the Wisconsin Supreme Court.

proposed rules. The filing of the Committee's report commenced the instant rule petition.

On October 17, 2011, the court discussed the report and requested additional information about rule advisory committees in the federal and state court systems. The court also voted to hold a public hearing on the matter. A letter soliciting public comment on the Committee's proposal was sent on February 8, 2012. The court received comments from Attorney Steven Levine on February 21, 2012, and from the Wisconsin Judicial Council on February 22, 2012. The court conducted a public hearing on March 5, 2012.

On November 28, 2012, Justice Roggensack filed a proposal renewing a suggestion for a calendar cycle for rules matters. The court discussed the matter at open rules conference on January 22, 2013, and Justice Roggensack amended her proposal the next day to include a "red-line" showing the differences between the rules proposed by the Committee and her proposal. The court discussed the matter again at open rules conference on February 28, 2013, and voted 4 to 3 (Chief Justice Abrahamson and Justices Ann Walsh Bradley and N. Patrick Crooks opposed) to adopt the concept of a calendar cycle for rules matters that would identify deadlines and dates for filing and consideration of petitions, comments, and court hearings.

On March 6, 2013, Chief Justice Abrahamson filed a series of documents, including comments received to the original Committee report and her assessment of how Justice Roggensack's rules proposal would work in practice. She later filed her own rules proposal on June 3, 2013, generally endorsing the Committee's proposal.

On June 11, 2013, the court voted to seek input from interested persons. The court received comments from the State Bar of Wisconsin and the Wisconsin Judicial Council, both declining to take a position on the various proposals. On August 2, 2013, Justice Roggensack filed a revised version of her rules proposal, and on October 2, 2013, Chief Justice Abrahamson filed additional comments critiquing that proposal. This matter was then held for some time while the court focused on other matters.

The court discussed this matter again at open rules conference on June 21, 2016, and voted unanimously to deny rule petition 12-01. This denial encompasses the Committee's rule proposals, the rule proposals submitted by individual justices, and thereby rescinds the court's February 28, 2013 decision to adopt, in concept, a "rules cycle."

The court sincerely appreciates the excellent and informative work of the Committee and thanks the members of the Committee for their efforts. The court was informed by the valuable information provided by the Committee's report and by careful scrutiny of its own practices. The court has concluded that there is no pressing need to create rules to codify its rulemaking process at this time and the court is disinclined to implement unnecessary rules. Therefore,

IT IS ORDERED that Rule Petition 12-01, In the matter of review of Report of the Wisconsin Supreme Court Advisory Committee on Rule Procedures is denied.

Dated at Madison, Wisconsin, this 28th day of July, 2016.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

