

# SUPREME COURT OF WISCONSIN

No. 16-02

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**In the Matter of the Petition to Amend  
Wisconsin Statutes §§ 901.07, 906.08, 906.09  
and Create Wisconsin Statute § 906.16**

**FILED**

**JAN 20, 2017**

Diane M. Fremgen  
Clerk of Supreme Court  
Madison, WI

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On April 19, 2016, Attorney April M. Southwick filed a petition on behalf of the Wisconsin Judicial Council (Judicial Council) requesting that the court amend Wis. Stats. §§ 901.07 (Rule of Completeness), 906.08(2) (Evidence of Character and Conduct of Witness), and 906.09 (Impeachment by Evidence of Conviction of Crime), and create Wis. Stat. § 906.16 (a new "bias rule" that reflects established common law but is not expressly mentioned in the rules of evidence).

The court discussed this petition at open rules conference on May 12, 2016, and voted to schedule a public hearing. On September 6, 2016, a letter was sent to interested persons seeking input. The Wisconsin District Attorneys Association, by its President Jacalyn LaBre, submitted a letter in support of the petition. The State Bar of Wisconsin submitted a response taking no position on the petition.

The court conducted a public hearing on October 24, 2016. Attorney April M. Southwick appeared and presented the petition on behalf of the Judicial Council, together with Attorney Thomas L. Shriner and the Honorable Michael R. Fitzpatrick. At the ensuing open rules conference, the court discussed the petition and raised a number of questions before voting to return the petition to the Judicial Council.

With respect to the proposed amendment of Wis. Stat. § 901.07 pertaining to the rule of completeness, the court acknowledged that the intended purpose of the amendment is, consistent with State v. Eugenio, 219 Wis. 2d 391, 410, 579 N.W.2d 642, 651 (1998), to clarify that the rule of completeness encompasses oral testimony. However, the court expressed concern about possible confusion arising from the proposed use of terms "recorded or unrecorded statement" and the proposed omission of the term "writing." The court indicated the language of this amendment should be revised.

The proposed amendment of Wis. Stat. § 906.08(2) pertaining to impeachment, would replace the term "credibility" with "character for truthfulness." The court asked the Judicial Council to provide more information about this change and to explain why the same change is not proposed for Wis. Stat. § 906.09(1). The court asked the Judicial Council to evaluate the use of the term "credibility" in the rules of evidence and to advise the court if there are other instances in which the term "credibility" should be replaced with "truthfulness" or "character for truthfulness." The court expressed interest in whether the proposed language tracks the corresponding Federal Rules of Evidence and asked the Judicial Council to explain

differences. The court also inquired whether relevant advisory notes to the federal rule should be printed with the Wisconsin rule and asked the Judicial Council to expand the proposed Judicial Council Committee Note.

With respect to the proposed amendment of Wis. Stat. § 906.09 (2) (intro) pertaining to impeachment by evidence of conviction of crime or adjudication of delinquency, the court asked the Judicial Council to explain why it opted to use the term "credibility" here and to address whether there should be reference to "truthfulness." The court asked the Judicial Council to reconsider the recommendation of the Legislative Reference Bureau to add the phrase: "all of the following" and also to address whether the enumerated factors should include a reference to expungement.

With respect to the proposed creation of Wis. Stat. § 906.16, the "bias rule," the court asked the Judicial Council to explain how this proposed rule compares with the Uniform Law, the decision to use the term "credibility" in this section, whether extrinsic evidence should be referenced in the language of the rule, and to discuss State v. Williamson, 84 Wis. 2d 370, 383, 267 N.W.2d 337, 343 (1978) and how it relates to the proposed amendments.

Finally, the court asked the Judicial Council to include a proposed effective date and enabling language when it submits a revised petition.

Therefore,

IT IS ORDERED that the petition is returned to the 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 Judicial Council.

Dated at Madison, Wisconsin, this 20th day of January, 2017.

BY THE COURT:

Diane M. Fremgen  
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, J. (*concurring*). For the full import of the court's discussion and concerns about the petition, I suggest that the Executive Director of the Judicial Council have a transcript of the court discussion prepared for the Council. Thank you for your work on this project.

