

Memorandum

STATE OF WISCONSIN
SUPREME COURT



DATE: March 6, 2013
TO: Diane M. Fremgen, Clerk of the Supreme Court
FROM: Chief Justice Shirley S. Abrahamson
RE: To be Filed in Rule Petition 12-01:
Justice Roggensack's **2010 Proposed Calendar** for Rules Petitions

On **June 7, 2010**, Justice Patience Roggensack proposed to the supreme court the following amendment to the Wisconsin Supreme Court's Internal Operating Procedures for Rule Petitions. This proposal is substantially similar to Justice Roggensack's Rule Petition 12-01. The proposal included steps 1 through 11, which are set forth in this memo.

Justice Roggensack's **2010 proposal** included the following calendar:

Jan. 10 Filing deadline for rule petition
Apr. 30 Public comments due
June 15 Petitioner's reply due
Aug. 1 Commissioner's memo to supreme court due
2nd wk Sept. Open rules petition conference
Jan. 15 Public hearings/open conferences are to be held before Jan. 15
No calendar date(s) set for court decision and approval of orders yet proposed rule cycle includes court decision on the petition. A court decision occurs when an order on the petition is released.

The history of Justice Roggensack's **2010 proposal** is informative. The court discussed this proposal in open administrative conference on **June 29, 2010**. Members of the court noted issues and raised questions about the proposed calendar, including the following:

- Wis. Stat. § 751.12 requires notice of a public hearing not less than 30 days or more than 60 days before the hearing, therefore, the notice and public comment period may fall within the holiday seasons in November and December;

- the timeframe for filings, notice, and hearings may not fit within the statutory requirements for public hearings and publication;
- the proposed framework is unlike the access to court culture that the supreme court does and wants to promote, and hampers interaction with the public;
- the September to January calendar is a short period of time for the court to decide all pending matters in September, hold all hearings before the end of the year, and get it all wrapped up by January 15;
- the calendar provides a deadline for the filing of the petition but no deadline for the adoption of the rule petition; and
- the calendar needs to be more flexible and provide more time for public comment.

In light of the comments and concerns, the court did not vote on Justice Roggensack's 2010 proposal. The court voted unanimously to convene a committee to address issues raised in the open administrative conference and the written comments to the following proposal filed by the Wisconsin Judicial Council; Attorney Beth Ermatinger Hanan; the Wisconsin REALTORS® Association; and A. John Voelker, Director of State Courts; and prepare a proposal for the court. The members of the Wisconsin Supreme Court Advisory Committee on Rule Procedures were:

Chief Justice Shirley S. Abrahamson
Wisconsin Supreme Court

Justice David T. Prosser, Jr.
Wisconsin Supreme Court

Justice Patience Roggensack
Wisconsin Supreme Court

Attorney Dean Dietrich
Wausau

Attorney Beth Hanan
Former Chair of Wisconsin Judicial Council, Milwaukee

Attorney Russ Whitesel
Legislative Council (retired), Madison

Attorney Lisa Roys
Public Affairs Director, State Bar of Wisconsin

Attorney Adam Korbitz
Former Government Relations Coordinator, State Bar of Wisconsin

Justice Roggensack's **June 7, 2010**, proposal provided as follows:

1. *Rules petitions shall be filed with the clerk of the supreme court by 5:00 p.m., January 10, in order to be considered by the court the following September at the court's rules conference (see infra paragraph 9), unless expedited review has been granted an emergency petition (see infra paragraph 2). Unless considered as an emergency petition, no rules petition will be considered by the court until its September rulemaking conference.*

2. *Petitions for rulemaking on an emergency basis shall be filed with the clerk of the supreme court and must be accompanied by: (a) a detailed statement of facts that support expedited proceedings; and (b) a motion for expedited review of the petition. The court will decide on an individualized basis whether to grant the motion for expedited review, depending on the nature of the emergency that caused the filing. If expedited review is granted, the court will establish the process that will be used for that petition and will post the process on the court's website, indicating that the petition is being considered on an expedited basis.*

3. *All rules petitions shall be filed by a paper copy accompanied by a disk of the rules petition in Microsoft Word format.*

4. *All rules petitions will be posted on the court's website under a heading that will indicate they are pending rules petitions.*

5. *All comments on rules petitions shall be filed with the clerk of the supreme court on or before April 30 at 5:00 p.m. Comments shall be filed by a paper copy accompanied by a disk of the comment in PDF format and shall not exceed five pages in length. Comments must be served on the petitioner, and the court shall post them on the court's website.*

6. *The petitioner shall have until June 15 at 5:00 p.m. to file a reply to each comment with the clerk of the supreme court. Replies shall not exceed 10 pages in length. Replies shall be posted on the court's website.*

7. *Each rules petition shall contain the following:*

- a. A completed cover sheet, using the current cover sheet form;*
- b. A draft of the proposed rule;*
- c. The reason for the requested change or the rule's purpose;*

d. A list of all persons and interests, both positive and negative, that may be affected by the rule;

e. The rules petition shall be no more than 10 pages in length, not including the draft language for the new rule and the rules cover sheet.

8. On or before the following August 1 of each year, staff to the court shall consider each rules petition, together with all comments received, and prepare a memo to the court that includes a recommended disposition for each rules petition.

9. During the second week of the following September of each year, the court shall consider all rules petitions that have not been filed on or before January 10 at 5:00 p.m., not including emergency rules petitions that may have been considered earlier, and determine, with the assistance of staff's recommendations, whether the rules petition should be: (1) denied; (2) sent back to the petitioner with suggestions for revisions; (3) referred to the judicial council; or (4) set for a public hearing before (a) a court commissioner or (b) the full court.

10. All public hearings and subsequent open administrative conferences on rules petitions shall be held before January 15, following the court's September rules conference.

11. Theresa Owens will act as the main staff support for the court in regard to rules petitions, with Julie Rich assisting on no more than 10% of the petitions due to Julie's other responsibilities as a staff attorney.