



STATE BAR OF WISCONSIN
Your Practice. Our Purpose.™

MEMORANDUM

To: The Honorable Justices, Wisconsin Supreme Court
From: Patrick J. Fiedler, President
Copy: Members, State Bar of Wisconsin Board of Governors
Date: September 16, 2013
Re: State Bar of Wisconsin Response - Rule Petition 12-01

The State Bar of Wisconsin, by its Executive Committee, thanks you for the opportunity to provide comments in response to your June 21, 2013, letter regarding petition 12-01, Judicial Rulemaking. As an entity of the Supreme Court, the processes by which this organization can operate are governed by Supreme Court rules, which means our ability to participate in rulemaking or to act to modify our own governance is greatly affected by this proposal. At its meeting on Sept. 6, 2013, the Executive Committee approved the filing of this letter in response to your inquiry.

The State Bar of Wisconsin concurs with the Court's Advisory Committee on Rule Procedures that the rulemaking process should be open and provide sufficient opportunity for interested parties to assist the court with comments and recommendations. While the State Bar of Wisconsin takes no position on whether the court should establish a specific timeframe for the administration of rules petitions, it does have concerns over timeframes that might leave the Bar with insufficient time for the vetting of proposed rules changes. The focus of our comments are to provide the Court with information regarding the Bar's decision-making process and the application of Wis. Stat. § 751.12 to publications of the State Bar.

Timeframes

Unlike cases that come before the Court where there are parties represented by counsel and a client readily available to respond to inquiries and make decisions, the rulemaking process requires that various interested parties engage their governing bodies for decisions. In the case of the State Bar of Wisconsin, the only entity authorized to take positions on behalf of the full membership is the Board of Governors (BOG) – by a 60% majority of members present. The BOG meets five times a year; generally late September, December, February, April and June. Therefore, the Bar's governing body is not convened to review petitions and provide a comment or a formal position for extended periods of time.

Under SCR 10.06 (2) the Executive Committee has been granted authority to act on matters of public policy that relate to the regulation of the legal profession or improving the quality of legal services. Within those parameters, the Executive Committee would be able to respond in lieu of the BOG. The opinion would be limited to that of the committee and not on behalf of the

governing body. If the Executive Committee is not able to act we are concerned that the Bar would be unable to participate in the rulemaking process.

Of particular concern is how the proposed deadlines might affect amendments to the State Bar of Wisconsin's bylaws. The BOG's deliberative process for modifying its bylaws requires that it consider the proposal at three separate meetings. Once adopted by the BOG, SCR 10.13 (2) requires publication in the Wisconsin Lawyer. Upon publication any member has 60 days in which to challenge that amendment by filing a petition signed by 25 members. It is conceivable that this type of challenge, if filed after the May 1 deadline and therefore not eligible for scheduling until the next cycle the following year, could stall implementation of duly passed bylaw amendments for over a year. We understand emergency procedures have been included in one of the proposed drafts. However, it is unclear whether the court would consider this an appropriate use of the procedure.

Publication

The Supreme Court also requested comments regarding publication requirements under Wis. Stat. § 751.12. Under this statute, notice of public hearings related to proposed rules changes must be printed in the State Bar of Wisconsin's official publication. As of this date, the official publication is the Wisconsin Lawyer magazine, which publishes 11 times per year with a combined July/August issue. The notice must be published not more than 60 days or less than 30 days before the date of the scheduled hearing.

Under the timeframe proposed by Justice Roggensack, all hearings would take place between the dates of Nov. 14 and Nov. 30. Notice of public hearings for that period would therefore need to be published in either the September issue (with a copy deadline of Aug. 1) or the October issue (with a copy deadline of Sept. 1). In order to comply with this section, all hearings must be scheduled and an order issued no later than Sept. 1.

On July 3, 2013, the State Bar of Wisconsin filed petition 13-08 that would give the Bar more flexibility in publication of hearing notices. Under petition 13-08, the State Bar proposes a modification to SCR 10.12: Official Publication, Notice to Members, which would grant to the Bar the ability to designate electronic media as official publications for the purposes of providing notice to members. If approved, the Bar would be able to use its electronic newsletter, *Inside Track* or the Bar's website, WisBar.org, to provide more timely and flexible publication options.

Conclusion

The State Bar of Wisconsin appreciates the difficulty of ensuring adequate consideration of all the Court's responsibilities. We acknowledge the challenge in establishing a workable timeframe to accomplish the Court's work while still providing adequate opportunity for input. Should you have any specific questions regarding this matter, please contact Public Affairs Director Lisa Roys at lroys@wisbar.org or (608) 250-6128.